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Procedural Inaccuracies and the Issue of Determining Real Estate Value in Court Proceedings

Abstract: The aim of the article is to analyze proceedings resulting in the determination of the value of real estate and an attempt to capture the reasons why the judicial determination of its value sometimes requires alternative or subsequent opinions on the value of the property by another expert valuer. For the purposes of this article, the method of examining individual cases was generally used, i.e. two exemplary court cases in which the main opinions, supplementary opinions, subsequent supplementary opinions, and subsequent main opinions were prepared and where an expert valuer was additionally summoned to a hearing in order to directly submit a supplementary opinion to the court.

Keywords: determination of the value of real estate, expert valuers, court proceedings

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1. Introduction

Determining the value of real estate is an essential element of many court proceedings, mainly so-called departmental proceedings. In cases of the abolition of joint ownership, the division of an inheritance or the division of joint property, the value of real estate affects the way in which the whole case is completed. It should be added that this is only an example of a list of cases in which there is a need for the court to determine the value of real estate. Rather rarely, this value is determined by the court on the basis of the consensus of the parties. Much more frequently, the determination of the value of real estate is carried out with the participation of an expert valuer based on their opinion. This document serves as evidence in court proceedings that a particular property has a specific value; most often the market value.

When preparing an appraisal report for the purposes of court proceedings, the expert valuer generally takes into account the provisions of two legal acts in the course of their work, i.e. the Act of 21 August 1997 on real estate management [1] (hereinafter: r.e.m.) and the Regulation of the Council of Ministers of 21 September 2004 on real estate valuation and preparation of an appraisal report³ [2] (hereinafter: r.e.v.p.a.r.). Practice shows that the mere compliance of opinions with the provisions of the Act (r.e.m.) and the Regulation (r.e.v.p.a.r.) is sometimes insufficient. Objections and comments are submitted to the opinion. It is pointed out that there is a need to prepare a supplementary opinion, and sometimes even an alternative opinion – a new report.

The reason for this may be a special purpose – namely the opinion of an expert valuer who is to develop a document using specialist knowledge for the needs of a court case in which an important goal is to determine the value of real estate, without which the case cannot be completed. Therefore, in order for the appraisal report to be the basis for resolving the dispute over the value of real estate, it must be recognized by the court as evidence useful for the outcome of the case, i.e. meeting the requirements for court expert opinions. In this respect, the court applies universal judicial criteria for assessing an expert opinion, which also apply to the opinion of expert valuers. These criteria are derived from the provisions of the Act of 17 November 1964, the Code of Civil Procedure [4] (hereinafter: c.c.p.). However, it sometimes transpires that the result of this assessment is negative. There is then a need to obtain another opinion on the value of the property from an alternative expert valuer. The consequence of the above is the prolongation of the proceedings and an increase in their costs.

³ Pursuant to Article 10(1) of the Act of 8 July 2021 amending the Real Estate Management Act and certain other acts (Journal of Laws of 2021, item 1561) [3], which entered into force on 9 September 2021, will remain in force until the entry into force of the implementing rules adopted pursuant to Article 159 r.e.m. by the Minister competent for construction, spatial planning and development and housing, but not longer than for 24 months from the date of entry into force of the Act as above.

2. The Expert Valuer in the Light of the Report of the Institute of Justice – the Expert in Court Proceedings

Issues related to the functioning of court experts in Poland are regulated by the Regulation of the Minister of Justice of 24 January 2005 on court experts [5]. Under the 2005 Regulation, a court expert, including an expert valuer, may be appointed if they:

- enjoy full civil rights;
- are at least 25 years of age;
- have a special theoretical and practical knowledge of the branch of science, technology, arts, crafts, and other skills for which it is to be established;
- guarantee the proper performance of the duties of an expert;
- agree to be appointed as an expert.

Court experts are appointed at a regional court by the president of that court, who keeps a list of court experts, according to individual branches of science, technology, art, crafts, and other skills. The 2005 Regulation also provides for the possibility of appointing, if necessary, a person as an expert from outside the established list. In court proceedings, an expert is generally appointed at the request of the parties. However, in proceedings in which the court is obliged to determine the composition and value of a certain asset *ex officio*, after determining that it includes real estate, in the absence of a consensus of the parties as to the value of real estate, the court also asks the expert valuer to determine the value of real estate *ex officio*.

The functioning of court experts, including expert valuers, has long been the subject of interest and analysis of, among others, jurisprudence and science.

In the years 2015–2016, the Institute of Justice⁴ conducted file, survey, statistical, and economic research on the functioning of experts and their opinions in court proceedings [6]. The aim of this research was to present the functioning of court experts in civil proceedings and to assess the usefulness of opinions issued by experts, including expert valuers, for these proceedings. These studies were to be used in the work on the Act on Court Experts. However, this law has not yet been passed, but a report has been drawn up from the research carried out, which provides a wealth of important information in relation to expert valuers and their opinions for the purposes of cases pending in courts.

Studies have shown that a significant share of disclosed expert opinions commissioned by the court are those relating to real estate. They also generate the highest costs among all opinions in the legal process. Research shows that expert opinions are often questioned, which results in supplementary opinions or opinions of other experts, generating additional costs.

⁴ Organisational unit subordinate to the Minister of Justice.

The report shows that private opinions are also submitted to the file, in which those concerning real estate have the largest share and constitute a total of 37% of all private opinions. While the court admits evidence from an expert opinion, it is most often evidence from an expert opinion in the field of real estate valuation/valuation, which accounts for 12.9% of all cases.

In 47.4% of the parties/participants in the proceedings raised objections to the prepared evidence from the expert opinion and most often they concerned the conclusions of the opinion (66.9%), the method adopted by the expert (33.5%) and the sources on which the expert relied (approx. 19%) (Table 1).

Table 1. Common reasons for challenging a main opinion

Conclusions of the opinion	66.9%
Method adopted by the expert	33.5%
The sources on which the expert relied in his opinion	approx. 19%

According to the report, there was a request to supplement it in every third main opinion prepared in a court case. In nearly every fifth case, an application was made to summon an expert to the hearing, and in every tenth an application for the appointment of a new expert. In 72% of cases, the court granted the request of the party/participant in the proceedings and appointed a new expert due to the allegations regarding the prepared opinion.

The report states that the time elapsed between the submission of the main opinion and the submission of the supplementary opinion was on average 204 days, with the time taken by the expert to draw up the main opinion (only) on average 69 days. It follows that the drafting of a supplementary opinion significantly prolongs the duration of legal proceedings.

In 11.5% of cases, the expert to whom the supplementary opinion was commissioned modified their position presented in the main opinion. Regarding supplementary opinions, reservations appeared almost 30% more often than in the case of main opinions, which were challenged in 47.4% of cases.

Opinions on real estate, including its value, prepared at the request of the courts – according to the report – have the largest share in the costs of the process related to obtaining expert opinions for the purposes of court proceedings. The conducted research shows that division proceedings, i.e. proceedings for the abolition of joint ownership, for the division of inheritance, for the division of joint property are not the only ones in which there is a need to use specialist knowledge of expert valuers. They also perform their activities in a number of other matters, such as the establishment of an easement of a necessary road, or in cases requiring the determination of the value of expenditures (necessary, useful, luxurious), expenses or benefits (natural, civil) related to real estate.

If the court accepts each of the party's requests (summoning an expert to the hearing, obliging them to submit a supplementary opinion, commissioning another expert) this means an increase in the costs of proceedings and a significant prolongation of the proceedings. The report states that in as many as 72% of cases, courts grant requests to appoint a new expert as a result of allegations raised to their opinion. Since the share of expert valuers' opinions in the total number of opinions prepared by court experts is the largest, the results of the research and the conclusions of the report should be referred to the opinions of expert valuers in particular.

Based on the conducted research, the report concluded that the level of knowledge by experts, including expert valuers, of the principles of preparing court opinions is not sufficient. Similarly, the level of knowledge of the provisions governing the judicial process and the role that the expert plays in this process is insufficient. At the same time, the need to train experts in the basics of the judicial process and the role of an expert in proceedings was pointed out. The report shows that the shortcomings of the opinion in relation to the necessary content and the elements of the opinion required by procedural regulations determine the fact that a supplementary opinion or even the opinion of another expert appears in the case.

3. Literature Research on the Participation of an Expert Valuer in Court Proceedings

Determining the value of real estate in Poland is generally regulated by two legal acts. The first of these is the Real Estate Management Act, which in Chapter 1 entitled *Determining the value of real estate* included in Section IV entitled *Real estate valuation* defines the approaches that can be used in the valuation of real estate, specifying that within individual approaches there are valuation methods, and these in turn can be divided into valuation techniques. This Act (r.e.m.) indicates in Article 155 that all necessary and available data on real estate are used in the valuation of real estate, contained in particular in:

- land registers;
- real estate cadastre;
- records of utilities networks;
- records of the ordinal numbering of real estate;
- registers of monuments;
- the tables and taxonogue maps established pursuant to Article 169;
- local plans, studies of conditions and directions of spatial development of the commune, decisions on building and land development conditions and building permits;

- lists kept by tax offices;
- documents held by the agency to which the State Treasury has entrusted, by law, the exercise of ownership and other rights in rem on its behalf;
- in notarial deeds held by housing cooperatives concerning the sale of cooperative rights to premises;
- agreements, rulings, decisions and other documents constituting the basis for entry in land and mortgage registers and registers included in the cadastral survey;
- energy performance certificate.

This provision only includes the most important and exemplary sources of data on real estate, which the expert valuer is obliged to use when determining real estate [7, p. 1138]. The Real Estate Management Act does not contain any specific rules for the valuation of real estate for the purposes of court proceedings, understood as the rules of procedure as a result of which the value of real estate is determined. This Act (r.e.m.) does not mention materials collected in court case files in real estate data sources. In Article 149 r.e.m., however, the legislator indicated that the provisions of the chapter entitled *Determining the value of real estate* apply to all real estate, regardless of their type, location and purpose, as well as regardless of the subject of ownership and the purpose of valuation, with the exclusion, however, of determining the value of real estate in connection with the implementation of the Act on consolidation and exchange of land. This means that the provisions of this Act (r.e.m.) also apply when determining the value of real estate for the purposes of court proceedings. At the same time, however, the expert valuer is obliged to perform activities consisting in determining the value of real estate in accordance with the principles resulting from the law. This is provided for in Article 175 section 1 of the Act (r.e.m.). This means that in the course of real estate valuation the expert valuer is obliged to apply all legal provisions that regulate issues related to the performance of professional activity [8, pp. 162, 317] and determining the value of real estate in a specific case when valuing real estate. When determining the value of real estate for the needs of a specific court case, they should also take into account the rules for collecting materials applicable in this type of cases, which for the expert valuer will be sources of data on the condition of real estate or the scope of expenditures (necessary and other) made on the property settled mainly between:

- an independent owner of real estate and owner on the principles set out in Art. 226 of the Civil Code [9] (hereinafter: c.c.);
- spouses on the principles set out in Article 45 of the Family and Guardianship Code [10] (hereinafter: f.g.c.).

The second legal act relating to the valuation of real estate is the regulation on real estate valuation and preparation of an appraisal report.

This legal act specifies:

- types of real estate valuation methods and techniques and methods of determining the value of real estate using different valuation approaches, methods and techniques;
- the means of determining the value of immovable property for different purposes, as the subject of different rights and depending on the type of immovable property and its purpose;
- methods of determining the value of expenditures and damage to real estate;
- the method of preparation, form and content of the appraisal report;
- conditions for the use of a mixed approach when determining the market value of real estate.

From the point of view of court proceedings, § 55 and 56 of Chapter 4 of the Regulation (r.e.v.p.a.r.) on the content of the appraisal report should be considered relevant [11, p. 47]. Pursuant to § 56 section 1 of the Regulation (r.e.v.p.a.r.), the appraisal report is to present, among others, determination of the subject and scope of valuation, determination of the purpose of the valuation, the formal basis for the valuation of real estate and the sources of data on real estate, determination of dates relevant to determining the value of real estate and, finally, a description of the condition of real estate. Also important is the provision of § 55 of the Regulation (r.e.v.p.a.r.), which introduces an obligation on the part of the expert valuer to indicate in the appraisal report the conditions of the activities performed, i.e. the procedure of the expert valuer's activities depending on the subject of valuation and the availability of materials, including documents constituting the basis for the valuation [8, p. 317].

When determining the value of real estate for the purposes of court proceedings, a third legal act, namely the Code of Civil Procedure (hereinafter: c.c.p.), will undoubtedly apply.

This Act (c.c.p.) regulates the course of court proceedings but does not contain any explicit rules on the basis of which an expert valuer would draw up an opinion on the value of real estate for the needs and purposes to be carried out in court proceedings. However, that Act (c.c.p.) determines the activities of an expert valuer in respect of § 56 section 1 points 1–5 of the 2004 Regulations (r.e.v.p.a.r.), namely:

- determining the subject and scope of valuation,
- determining the purpose of the valuation,
- the basis of formal real estate valuation,
- sources of real estate data,
- determination of dates relevant to the determination of the value of the property,
- description of the condition of the property.

In the scope of activities performed as part of the valuation of real estate included in § 56 section 1 points 6–9 r.e.v.p.a.r., the Code of Civil Procedure does not interfere.

Indication of the purpose of the property being valued, analysis and characteristics of the real estate market in terms of the purpose and method of valuation, indication of the choice of approach, method and technique of estimation, or finally the presentation of calculations of the value of the property and the result of the valuation with justification, is rather based on the special knowledge of expert property appraisers and the Code of Civil Procedure does not interfere in this scope.

However, the Code of Civil Procedure contains strict rules for the collection of evidence constituting a source of data on immovable property and it does not follow from this law that those rules do not apply to an expert valuer. An expert valuer is not authorized to supplement by his own actions what the party failed to gather in the case by referring to the possibilities offered by Art. 155 of the Act (r.e.m.).

The subject of determination by expert valuers in court proceedings are essentially:

- a) rights in rem in real estate, including limited rights in rem:
 - ownership,
 - perpetual usufruct,
 - easement,
 - usufruct,
 - cooperative ownership right to the premises,
- b) expenditure on real estate.

Ownership, perpetual usufruct, cooperative ownership right to premises and outlays seem to be examples of such a determination of value in which the expert valuer should pay particular attention to the content of the file to the extent that their activities will relate to those included in § 56 section 1 points 1 to 5 of the 2004 Regulation (r.e.v.p.a.r.).

An opinion on the value of real estate in many court proceedings is evidence that directly shapes the content of the final decision and the only general indications of the Code of Civil Procedure for this type of evidence are that:

- the court means whether the opinion is to be given orally or in writing⁵ and that;
- the expert's opinion should state the reasons on which it is based.⁶

Apart from these legal acts (r.e.m., r.e.v.p.a.r.), there are no others that would introduce the rules according to which an expert valuer should prepare an opinion on the value of real estate before the court. The Regulation of the Minister of Justice of 5 August 2016 on the detailed manner of conducting the description and valuation of real estate [12] cannot be considered as such, because this regulation regulates the description and valuation of real estate in enforcement proceedings, which, although supervised by the court, is nevertheless carried out by a court bailiff.

⁵ Under Civil Procedure Code Art. 278 §3: *The court will determine whether the opinion is to be presented orally or in writing.*

⁶ Under Civil Procedure Code Art. 285 §1: *The expert's opinion shall state the reasons on which it is based.*

There are no studies that would directly include the conduct of an expert valuer in determining the value of real estate, when this value must be determined by the court in court proceedings. The available publications generally refer to the role of experts in court proceedings, the importance of their opinions, including appraisal reports, as evidence in court proceedings [13–15] and include the criteria according to which the assessment of an expert's opinion should be made [16, 17]. However, it is also a question of including in the appraisal report the procedure as a result of which the value of the immovable property is determined, including the presentation of the conditions for the transactions referred to in § 55 section 1 of the 2004 Regulations (r.e.v.p.a.r.). These conditions are understood as the procedure of the expert's activities depending on the subject of the valuation and the availability of materials, as well as documents constituting the basis for the valuation [8]. This will include the use of materials collected in the case files and materials outside the files constituting a source of information about the real estate and its condition on a specific date in the course of real estate valuation.

There are no defined rules for determining the value of real estate in court proceedings, taking into account its specificity and rules for collecting evidence in the case. In general, however, the literature expresses the consensus that a court expert, including an expert valuer, may not replace the parties to the proceedings in gathering evidence relevant to the outcome of the case [18]. The sole purpose of the expert's opinion is to enable the court to properly assess the evidence already in the case file where special information is necessary for this assessment [14]. Experts, including expert valuers, generally do not establish facts in the course of court proceedings.

The same applies to the jurisprudence of common courts and the jurisprudence of the Supreme Court, where the emphasis is rather on the criteria for the judicial assessment of an expert's opinion and the task of an expert [19–24]. Less attention is paid to the activities of the expert, including the expert valuer, preceding the preparation of the opinion document, although they often influence the shape, content, and results of the opinion. In the case of expert opinions, these activities may determine whether the opinion will be considered useful for the decision or whether it will be deprived of its usefulness. It is noted, however, that the admission of expert evidence should in principle only take place when the factual material enabling the expert to give an opinion has already been gathered [25], that it is for the court to establish the facts and not to the expert, who assesses these facts in the light of their expertise [23, 26] and that the determination of the value of real estate requires special knowledge [27].

4. Research Methodology

For the purposes of this article, observational methods, analysis of individual cases (autonomous file research, analysis of the results of file research of the Institute of Justice), analysis of literature, case law and legal acts.

There were used in order to:

- examine and assess the significance and prevalence of the problem of determining the value of real estate in court proceedings, its impact on the duration and costs of these proceedings;
- seeking legal regulations or principles derived from literature or case law relating to the issue of determining the value of real estate for judicial purposes;
- demonstrating that the existing arrangements are not sufficient to the extent that they apply to the valuation of immovable property for judicial purposes and require additions or amendments.

The court cases were selected because the co-author of the article had the opportunity to directly observe the factors affecting the efficiency and reliability of real estate valuation and the operation of regulations determining the method of judicial determination of the value of real estate. The presented cases, in the opinion of the authors of the article, pose the problem in a special way, revealing the lack of complementary solutions appropriate for it and showing the need to introduce them.

5. Case Study

The first case concerned a case concerning the division of the joint property of former spouses. It included, among others, two limited property rights, i.e. cooperative ownership rights to residential premises. In the course of the proceedings, there was a dispute between the parties as to the condition of the premises on the date on which the matrimonial property community ended. One party argued that the condition of the premises after the termination of the community of property had significantly improved in connection with the expenditures made, while the other that the scope of expenditures after the termination of the community of property was insignificant, and the expenditures cited were made on the date when both premises constituted joint property. The evidence in this case was quite extensive and partly related to the premises in question, but it did not make it possible to clearly determine their condition on the date that the expert valuer was to take into account in his opinions. The stages of arriving at the value of the estimated rights are shown in Table 2 and Table 3.

Table 2. Determining the value of the cooperative ownership rights to premises A (at S. Street)

Estimation of the value of the cooperative ownership right to premises A (at S. Street)	
31.10.2017 Judicial valuation order	- ordering to determine the value of the cooperative ownership right to premises A (at S. Street) according to the date of termination of the community of property, i.e. 18.04.2014

Table 2. cont.

3.04.2018 Main opinion	– estimated market value: PLN 247,000
16.07.2018 Objections to the main opinion	<ul style="list-style-type: none"> – the opinion contains a number of inaccuracies; – the final value of the property is far from its actual value; – inadmissible findings on the basis of documentation submitted during the on-the-spot verification which was not in the file; – determining in the opinion the value per 1 m² of the assessed property in an amount lower than the cheapest of comparative transactions; – lack of objectivity of the expert; – the contradiction of the conclusions of the opinion with their content; – contradiction of opinions with real prices on the market
15.10.2018 Written supplementary opinion	– upholding the conclusions of the main opinion regarding the value of the cooperative ownership right to premises A (at S. Street)
19.11.2018 Objections to the supplementary opinion	<ul style="list-style-type: none"> – there are no grounds for assuming that the opinion is correct; – erroneous acceptance in the opinion of the condition of the premises on the date of estimation, as “for renovation”; – a request to summon an expert valuer to a hearing in order to submit an oral supplementary opinion
5.03.2019 (hearing) Supplementary oral opinion at the hearing	<ul style="list-style-type: none"> – acceptance of the results of the opinion in the field of cooperative ownership right to premises A (at S. Street); – indication by the expert property appraiser that the information disclosed at the hearing gives rise to the preparation of another supplementary opinion, but only regarding the cooperative ownership right to premises B (at G. Street)

In the case of the cooperative ownership rights to premises A, determination of its value for court purposes from the date of ordering the valuation to the date of acceptance of the results of the opinion took 16 months.

Table 3. Determining the value of the cooperative ownership rights to premises B (at G. Street)

Estimation of the value of the cooperative ownership right to flat B (at G. Street)	
31.10.2017 judicial valuation order	– order to determine the value of the cooperative ownership right to premises B (at G. Street) according to the date of termination of the community of property, i.e. 18.04.2014
3.04.2018 main opinion	– determined market value: PLN 225,000

Table 3. cont.

16.07.2018 objections to the main opinion	<ul style="list-style-type: none"> – drawing up an opinion containing a number of inaccuracies; – indication in the final opinion of the value of the property far from its actual value; – making findings having a significant impact on the opinion drawn up and the final conclusions on the basis of documents outside the file; – lack of objectivity on the part of the expert, taking into account the oral submissions of one party and the photographs submitted and submitted during the inspection; – contradiction of the conclusions of the opinion with the content of the protocol drawn up on the on-site inspection; – raising doubts as to the acceptance by the expert of the lowest price per 1m² among the comparative properties; – lack of description of all dwellings constituting the basis for comparison to determine the value of the estimated right; – incorrect determination of the condition of the premises on the date of termination of the community of property
15.10.2018 written supplementary opinion	<ul style="list-style-type: none"> – upholding the conclusions of the main opinion regarding the value of the cooperative ownership right to premises B (at G. Street)
19.11.2018 objections to the supplementary opinion	<ul style="list-style-type: none"> – there are no grounds for assuming that the opinion is correct; – erroneously accepted in the opinion of the condition of the premises on the date of estimation, as “for renovation”; – a request to summon an expert valuer to a hearing in order to submit an oral supplementary opinion
5.03.2019 (hearing) supplementary oral opinion at the hearing	<ul style="list-style-type: none"> – indication by an expert property appraiser that the information disclosed at the hearing gives rise to the preparation of another supplementary opinion only regarding the cooperative ownership right to flat B (at G. Street)
5.03.2019 judicial order to draw up a written supplementary opinion	<ul style="list-style-type: none"> – the obligation for the expert valuer to take into account the circumstances revealed at the hearing on 5.03.2019; – the obligation of the valuer to determine whether and to what extent these circumstances affect the value of the estimated right
5.04.2019 written supplementary opinion	<ul style="list-style-type: none"> – market value of the estimated right after taking into account the circumstances revealed at the hearing: PLN 253,000
3.06.2019 objections to the supplementary opinion	<ul style="list-style-type: none"> – failure by the expert valuer to take into account all the circumstances revealed at the hearing on 5.03.2019, which significantly affected the value of the estimated right; – erroneous determination of the condition of the premises as “for partial renovation” and erroneous acceptance of the state of the premises on the date of termination of the community of property; – drafting an opinion in an unreliable manner; – request for a further supplementary opinion

Table 3. cont.

18.08.2020 – hearing of an oral supplementary opinion of an expert valuer submitted at the hearing	<ul style="list-style-type: none"> – an attempt by an expert to submit at the hearing a “supplementary opinion including the correction of the condition of the premises as a result of the objections to a written supplementary opinion”; conclusions of the “opinion”: determined market value: PLN 275,000; – request of the party not yet challenging the opinion to disregard another written “supplementary opinion” because it was drawn up without the court’s authorisation (no formal basis), request that the “supplementary written opinion” be treated as a private document not relevant to the outcome of the case; – omission by the court of the “supplementary written opinion” because it was drawn up without the order of the court
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In the case of the cooperative ownership right to flat B, the estimation of its value for court purposes from the date of the valuation took nearly 34 months.

The second case concerned the abolition of co-ownership of a land property developed with a single-family residential building and a building constituting a garage in M. near Warsaw. In the course of the proceedings, the court commissioned an expert valuer to determine the current value of the property being the subject of the proceedings. An expert valuer prepared an opinion in which he determined the market value of real estate. In the opinion of the expert property appraiser, however, there were findings regarding the expenditures made in the building on a specific date, which, as it resulted from the opinion, were made independently by an expert valuer based on a site inspection and an interview. The expert thus encroached on the jurisdiction of the court, since he made findings of fact to which he was not entitled. Meanwhile, the scope of possible expenditures and the date of their implementation were highly disputed in the case. The information contained in the appraisal report on the scope of expenditures prompted the party interested in their settlement to submit a request for the admission of evidence from an expert opinion in the field of cost estimation of construction works in order to estimate the value of expenditures for the renovation of the building and adaptation of the basement – as it was specified in the opinion of an expert valuer in the application. Therefore, the scope of expenditures was to result not from the materials collected in the case (evidence submitted by a participant in the proceedings), but from the description of these outlays included in the opinion of an expert valuer assessing the value of the entire property.

The stages of the court proceedings at which the market value of real estate were estimated are shown in Table 4.

The parties questioned the legitimacy of estimating expenditures that were not demonstrated by either documents or witness testimonies but were only specified by an expert valuer in their opinion about the value of real estate. Ultimately, the expenditures were not estimated, among others due to the fact that the expert valuer was not allowed to enter the property. The value of the real estate was updated twice: in the supplementary opinion of 9 August 2015 (PLN 1,613,000) and in the further supplementary opinion of 28 November 2016 (PLN 1,018,000). This value was

estimated twice more by two more expert valuers. Ultimately, the court determined that value on the basis of the opinion of 5 April 2018, supplemented by the opinion of 8 August 2018. Therefore, determining the market value of real estate in court proceedings in this case lasted as long as 76 months, i.e. over 6 years.

Table 4. Determining the value of real estate located in the village of M. at K. Street

Estimation of the value of real estate located in the village of M. (at K. Street)	
19.03.2012 judicial valuation order	<ul style="list-style-type: none"> – ordering to determine the current value of real estate located in M. (at K. Street); – ordering to determine in the opinion the impact of separation of 4 premises on the above-mentioned real estate, including according to the projects contained in the opinion of an expert in the field of construction, on the value of the above-mentioned real estate; – ordering the preparation of an opinion after consulting the file and inspecting real estate
12.06.2012 main opinion	<ul style="list-style-type: none"> – determined market value of real estate: PLN 1,449,923; – separation of 4 residential units (...) will reduce the value of the estimated real estate, taking into account the sum of the values of individual 4 separate premises; – the value of 1 m² of a residential building in its current state, as a whole, is greater and amounts to PLN 6296 of the usable area of the building than the sum of hypothetical values of separated 4 premises; – transaction prices of 1 m² of residential premises range from PLN 3194 to PLN 6004 – establishing, on the basis of an on-site visit and an interview, that real estate was specifically affected by the expenditure specified in the opinion; – the calculation of expenditures requires the use of detailed techniques and the competence of an expert with building licenses, who deals with the cost estimation of individual construction works
9.07.2012 objections to the main opinion (side A)	<ul style="list-style-type: none"> – an internal contradiction of opinion between the statement that premises with a smaller area achieve higher transaction prices per 1 m² of usable area and that the premises in villa buildings were in demand, and the conclusion that the separation of 4 units in the building called "Villa..." would reduce the value of the estimated real estate, taking into account the sum of the values of individual 4 separate premises; – lack of similarity between estimated real estate (developed in the 1920s and located in the city center in the villa area) and real estate from the collection of similar properties (real estate from the outskirts of the city constituting former agricultural real estate converted into building plots developed in the 1980s and later); – a request for a supplementary opinion to determine the value of real estate taking into account similar real estate traded on the market in the period 2006–2012, located in close proximity and taking into account changes in the price level due to the passage of time
9.07.2012 position on the opinion on the value of the property (side B)	<ul style="list-style-type: none"> – the opinion is not contested; – request for an expert opinion with building qualifications in the field of cost estimation of construction works in order to estimate the value of expenditures made for the renovation of the building and adaptation of the basement specified in the opinion

Table 4. cont.

3.01.2013 judicial order to draw up a supplementa- ry opinion	– commissioning a supplementary opinion to determine the value of real estate taking into account similar properties traded on the market in the period 2006–2012, located in close proximity and taking into account changes in the price level due to the passage of time
9.02.2013 supplementary opinion	– determined market value of real estate: PLN 1,774,555
19.03.2013 order to estimate the value of expenditures	– ordering the determination of the value of the works (expenditures) specified in the letter of party B (in this letter side B stated “From the content of the expert opinion (...) shows that the applicants carried out the following renovation and modernization works: (...)”

6. Results and Discussion

In the first case described, the formal basis for the valuation was the court’s decision to appoint an expert valuer. This provision did not contain detailed assumptions that the expert should make when estimating cooperative ownership rights to premises, apart from indicating the subject of valuation and the date on which the condition of the premises to which the valuation was to refer should be assumed. There was no indication by the court of what condition of both premises an expert valuer should take as the basis for their calculations on a given date. The order did not authorize the expert to use materials from outside the files other than those listed in Art. 155 of the Act (r.e.m.), while the expert used such materials. This gave rise to an effective allegation that the expert unduly determined the condition of the premises, which is the preserve of the court. This provoked further opinions and significantly increased the costs of the process, because in this case what was included in § 56 section 1 points 3 and 5, i.e. the sources of data on real estate and the description of the condition of real estate, was perceived in the case as having a decisive impact on the result of the valuation. In the present case, such a long period of time during which the expert valuer estimated the rights indicated by the court was the result of various reasons. The first reason was the unclear evidence and the lack of guidelines that an expert valuer should take into account in connection with the dispute of the parties as to the condition of real estate on a specific date. The second reason was the partial, independent determination of the condition of the real estate by an expert valuer. The third was the objections of the party to the proceedings to the opinion made in connection with the findings of the expert valuer.

The second case is an example of the significant influence that an expert valuer can have on the course of a court case and its scope, both in the part in which they act within their competence and when they exceed them. However, tolerance and

the reaction of courts in such situations vary. In the present situation, the court was ready to commission an expert valuer to estimate the value of the expenditures, even though their scope was not specified by the party interested in their calculation, nor was the fact that they were made demonstrated by appropriate source materials. Expenditures and their scope stem from the statement contained in the opinion of an expert valuer, who estimated the value of the entire property. This can have far-reaching consequences and a significant impact on the outcome of the case if the opinion estimating the value of these expenditures came to fruition. The most likely objection to such a possible opinion would be the one concerning the sources on which the expert valuer would base their opinion, or rather the obvious lack of them or the use of materials that were not in the case file. It would rather not be sufficient to explain that the value of the expenditures was calculated by their scope stated in the appraisal report of the previous expert. The failure of the expert valuer to comply with the rules governing the taking of evidence in court proceedings and the exceeding of his powers and encroachment on the powers reserved for the court, gave rise to an additional dispute between the parties. Subsequently, they resulted in the fact that the ongoing dispute caused the opinion on the value of the property to become outdated, with the concomitant need to update them and even appoint a new expert valuer.

7. Conclusions

Determining the value of real estate by an expert valuer for the purposes of civil court proceedings is not solely limited to the preparation of an appraisal report (opinion) in accordance with the Real Estate Management Act and the regulation issued under its authority. The order given to an expert valuer by the court also includes the expectation of the court and the parties that the opinion – report will also be developed taking into account the rules governing the process, applicable to the parties and the court, and thus also to the expert valuer. These rules provide for certain possibilities, but they also provide for numerous restrictions that an expert valuer must take into account in the course of their work. They usually determine the formal basis for real estate valuation, sources of real estate data (additional to those included in Art. 155 of the Act), dates relevant to determining the value of real estate and, finally, the condition of real estate to be taken as the basis for calculations. The parties and the court pay attention to the manner in which the expert valuer in the prepared opinion took into account what was collected and determined in the case and whether they followed the rules according to which the proceedings are conducted. An expert valuer must be aware of this, because their opinion – a report constituting evidence of an important circumstance will also be assessed by the prism of compliance with the rules governing the process and the criteria for assessing each piece of evidence that has been submitted to the file. The opinion of an expert valuer is extremely important evidence and that is why it is subjected to such a thorough assessment of the parties, their attorneys and the court in such cases. Although it is

a document developed using special messages, it must be understandable to recipients. When performing an order granted by a court, an expert valuer enjoys a certain freedom, which is mainly granted to them by the provisions of the Real Estate Management Act, in particular Art. 155 of the Act on Real Estate Management, which indicates an open catalogue of real estate data sources from which an expert valuer may draw. The freedom provided by the provisions of the Real Estate Management Act does not remove the obligations and restrictions provided for in the provisions of another act (Civil Procedure Code) regulating the rules of conduct of the court, the parties and expert valuer. Knowledge of these principles and their application by expert valuer, in addition to the provisions of the Real Estate Management Act and the Regulation on real estate valuation and preparation of an appraisal report, is of great importance when assessing the usefulness of an expert opinion of a property appraiser in a court case. Due to the fact that no legal act relating to the valuation of real estate contains the principles of this valuation for court purposes, and court cases in which it is necessary to determine the value of real estate with the participation of an expert valuer are relatively large, so it seems necessary to introduce an appropriate solution. This solution should give the expert valuer the opportunity to efficiently and reliably determine the value of the real estate in court proceedings, also in a manner consistent with the rules governing these proceedings.

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