

1 \$665,000, at rate of nine percent interest, to Defendant Angyuta Shipping Company. The loan
2 underwent several revisions over the years and the last of which resulted in a principal amount of
3 \$818,137.03. *See* Order Denying Confirmation and Certification of Sale of Foreclosed Property at
4 1-2, July 9, 2014. Thereafter, Defendants failed to make payments and defaulted on the loan.

5 A default judgment was entered against Defendants Angyuta Shipping Company and Fidel
6 S. Mendiola, Sr. on June 30, 2004. On June 15, 2011, a default judgment was entered against
7 Defendants Fidel A. Mendiola, Jr. and Fermina S. Mendiola. On December 19, 2011, summary
8 judgment was granted against Daniel D. Sasakura, Juan M. Ayuyu, and the Estate of Dimas A.
9 Hocog.

10 On April 1, 2013, the Court granted Plaintiff's Writ of Execution as to Tract No. 22080 and
11 Lot No. 345 R 215. On July 1, 2011, Tract No. 22080 was appraised at \$86,000.00, and on May 9,
12 2013, Lot No. 345 R 215 was appraised at \$4,000.00. These appraisals were obtained by Plaintiff
13 CDA voluntarily and were not required by any court order prior to the sale.¹ (Writ of Execution as
14 to Tract No. 22080 and Lot No. 345 R 215, April 1, 2013).

15 On July 9, 2013, Plaintiff CDA filed an Application for an Order of Confirmation of Sale
16 and Certificate for the sale of both Tract No. 22080 and Lot No. 345 R 215. Thereafter, Tract No.
17 22080 was sold for \$35,000.00, and Lot No. 345 R 215 was sold for \$1,500.00. Both properties
18 were sold to Ignacio T. Dela Cruz, DVM, at a public auction on September 27, 2013.

19 On January 9, 2014, Plaintiff CDA filed an application for a certificate of sale with the
20 court. The Court then ordered Plaintiff CDA to provide appraisals of the two properties on February
21 23, 2014. Order for Appraisal, Feb. 23, 2014. On March 3, 2014, Plaintiff CDA filed the appraisals
22 it possessed, along with a Response presenting various concerns about the Court's Order.
23 (Response to Order for Appraisal, March 3, 2014). One of the appraisals was conducted

24 ¹ The appraisal was also not required pursuant to statutory authority. 2 CMC § 4537(e).

1 approximately four months prior to the auction, and the second was conducted two years before the
2 auction. On July 9, 2014, the Court issued an order denying Plaintiff CDA's request for a certificate
3 of sale. (Order Denying Confirmation and Certification of Sale of Foreclosed Property, July 9,
4 2014).

5 Plaintiff then filed a motion to disqualify, along with the instant motion to reconsider.
6 Plaintiff contends that the Court was incorrect in failing to issue a certificate of sale because the
7 foreclosure sale took place in accordance with the law and that no party objected to the sale. Yet,
8 the Court refused to approve it. The Court requested appraisals, which were provided, but the
9 appraisals were not required by statute or the Court prior to foreclosure. No evidentiary hearing was
10 ever held, and the Court's objections to the sale were never articulated until the Order was issued.

11 Plaintiff CDA further states that reconsideration is required to correct clear error, stating that
12 the Court's Order was "clearly erroneous in the following ways: (1) There is exhaustive
13 Commonwealth law which governs this issue and there was no reason to look to the restatements or
14 to the common law; (2) Commonwealth law provides clear rules, standards, and guidance for
15 foreclosure sales, for confirmation of those sales, and for vacating foreclosure sales – those rules
16 were adhered to by Plaintiff CDA but those rules were not applied by the Order; (3) even if we look
17 to the Restatement, it does not support the Order but requires confirmation of the sale; (4) similarly,
18 the common law does not support the Order; and (5) the Court had no authority to act *sua sponte*
19 and no evidence upon which to base its decision.

20 **LEGAL STANDARD**

21 A motion for reconsideration may be brought under Rule 59(e) when there is a change in the
22 controlling law, new evidence is available, or there is a need to correct a clear error or prevent
23 manifest injustice. *Angello v. Louis Vuitton Saipan*, 2003 MP 17 ¶ 23 (citations omitted). Granting
24 any such motion is within the trial court's discretion and requires the Court to balance the need of

1 bringing litigation to a close and the need to render just rulings based upon all of the facts. *Sipp v.*
2 *Astrue*, 641 F.3d 975, 981 (8th Cir. 2011) and *Templet v. HydtroChem Inc.*, 367 F.3d 473, 479 (5th
3 Cir. 2004).

4 Rule 59(e) provides a means for the trial court to “correct its own errors, sparing the parties
5 and appellate courts the burden of unnecessary appellate proceedings.” *Howard v. United States*,
6 533 F.3d 472, 475 (6th Cir. 2008) (quoting *York v. Tate*, 858 F.2d 322, 326 (6th Cir. 1988)).
7 However, reconsideration is an extraordinary remedy and should be used sparingly. *Commonwealth*
8 *v. Brana*, Civil Nos. 04-0583, 05-0006 (NMI Super. Ct. November 28, 2005) (Order Den. Recon. at
9 1) (citations omitted); *Templet*, 367 F.3d at 479. These types of motions are not generally granted
10 absent “highly unusual circumstances”. *McDowell v. Calderon*, 197 F.3d 1253, 1255 (9th Cir.
11 1999).

12 DISCUSSION

13 In its motion, Plaintiff CDA argues that (1) the Court’s reliance on the Restatement and
14 common law was inappropriate; (2) Commonwealth real estate mortgage law governs this issue and
15 requires confirmation of sale; (3) the Restatement supports confirmation of the sale; (4) the
16 common law authority cited by the Court does not support the order; and (5) the *sua sponte* Order
17 threatens the rights of all of the interested parties.

18 **A. COURT’S RELIANCE ON THE COMMON LAW**

19 According to Plaintiff CDA, the Commonwealth provides comprehensive law governing
20 real estate mortgages. Therefore, the Court should not have looked to the Restatement and the
21 common law when ruling on the issue of the foreclosure sale.

22 The restatements of law, and in their absence, the common law as generally understood and
23 applied in the United States, are to be applied in the Commonwealth where there is no local written
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1 law or local customary law to the contrary. 7 CMC § 3401. Thus, the Court may look to the
2 restatement and the common law when there is no controlling Commonwealth law.

3 **B. GOVERNING LAW**

4 Foreclosure matters in the Commonwealth are governed by the Real Estate Mortgage Law,
5 as stated in 2 CMC §§ 4511-4555. Specifically, 2 CMC § 4537 details the statutory provisions set
6 out for actions related to the foreclosure of mortgages.

7 Under the statute, all judicial actions for the foreclosure of mortgages must be brought
8 before the Commonwealth Superior Court. 2 CMC § 4537(a). The Court shall order a sale of the
9 mortgaged property if the mortgagor – after being directed to do so – “fails to pay the principal,
10 interest, costs and attorney’s fees at the time directed in the order”. *Id* at § (e). Foreclosure sales
11 must be “made by a person appointed by the court for that purpose and must be made at a public
12 place...upon notice and in the manner provided by law...with such additional requirements...as
13 may be prescribed by the court to attempt to assure a reasonable return from the sale”. *Id*.

14 Section (f) describes the requirements of a certificate of sale for a foreclosure action.
15 Plaintiff admits that “[w]hether *judicial* confirmation of the certificate of sale [in a foreclosure
16 action] is *required* by Commonwealth law is unclear”. Mot. at 7. What is required is that the seller
17 provides a certificate of sale to the purchaser. Plaintiff CDA has been in the practice of requesting
18 court approval of these certificates to legitimize the sale so that the new owner has a record of clean
19 title. However, the statutory section discussing the certificate of sale does not make a single
20 statement about the Court’s involvement in the approval process.

21 The entire foreclosure statute lacks any affirmative duty on the part of the court to approve,
22 by right, a foreclosure sale, despite Plaintiff’s contention that the Court is bound to accept these
23 sales. In fact, the statute lacks any detail regulating court oversight post-sale.

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1 Where written law on a particular issue does not exist in the Commonwealth, the Court may
2 turn to the restatements of law and the common law for guidance. 7 CMC § 3401. Accordingly, it
3 was completely within the Court’s discretion to look toward the restatement and common law to
4 gain insight on this issue.

5 The Commonwealth has no law indicating that a Court must confirm a foreclosure sale. It
6 does, however, have statutory law that envisions court oversight to “assure a reasonable return from
7 the sale.” 7 CMC § 4537(e). Yet again, there is no written Commonwealth law describing what
8 constitutes a reasonable return from the sale. Thus, the Court’s decision to seek guidance from law
9 existing outside the Commonwealth is perfectly reasonable and acceptable under these
10 circumstances.

11 Moreover, the Court’s decision seems in line with the spirit of section (e)’s provision that
12 allows a court to create additional requirements to ensure a reasonable sale. This statutorily
13 allowed oversight is surely meant to protect the mortgagee from being saddled with large deficiency
14 judgments and the mortgagor from having to collect on such deficiencies. A person’s land is often
15 his most valuable asset. When property is sold for far below its value, the mortgagee is left in an
16 untenable position and may face debt that he can never fully repay. Thus, court oversight in these
17 matters not only protects the mortgagee from insurmountable debt obligations, but also protects the
18 mortgagor’s investment by helping to assure that property does not get sold for unreasonably low
19 prices, thereby preventing the mortgagor from losing even more money when a mortgagee defaults
20 on his loan.

21 **1. Practical effect**

22 Plaintiff argues that the Order provides no remedy and in doing so its practical effect is that
23 it vacates the foreclosure sale. Plaintiff goes on to allege that the Court vacated the sale based on
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1 price alone, which is not allowed by Commonwealth law. Plaintiff cites 2 CMC § 4537(j) to
2 support this claim, which in relevant part reads:

3 Vacating Sale. Upon motion by an aggrieved party filed within one year of the date
4 of sale, the court may vacate a foreclosure sale and order a new sale upon a finding
5 that there has been fraud in the procurement of the foreclosure decree, where the sale
has been improperly, unfairly, or unlawfully conducted, or when the sale is so
tainted by fraud that to allow it to stand would be inequitable.

6 However, this section of the foreclosure law deals specifically with motions made by
7 aggrieved parties. This Order is not the result of a motion filed by an aggrieved party.
8 Accordingly, the requirements set forth by the Plaintiff are not applicable. Here again, since there
9 is no statutory or other regulation related to court oversight or confirmation of a foreclosure sale,
10 the Court was correct in consulting the restatement and common law on this issue.

11 Further, the Order did not refuse to confirm the sale because of price alone. Instead, the
12 Court invoked its equitable powers and declared both the price and Plaintiff CDA's methodologies
13 unjust. The Court determined that the manner in which the sale was conducted was unfair in that
14 Plaintiff CDA treats defaulting mortgagees inconsistently and that inconsistency is unfair and
15 inequitable.

16 The Court has an affirmative duty to review all motions submitted to it. This duty includes
17 the duty to ensure the overall fairness of its orders. Surely the Court can intervene when it sees a
18 regular pattern of inequity in the way in which a government agency applies its policies.

19 **2. "Reasonable Rate of Return" and the law outside the Commonwealth**

20 The Commonwealth has not addressed what constitutes a reasonable rate of return, neither
21 in the foreclosure statute, nor in case law. Plaintiff recognizes this fact and points this Court to the
22 US Supreme Court's decision in *BFP v. Resolution Trust Corp.*, 511 U.S. 531, 545 (1994).

23 In *BFP*, the Court determined that "[m]arket value cannot be the criterion of equivalence in
24 the foreclosure-sale context" because this type of price cannot be expected at a public auction or

1 forced sale. *Id.* at 538. When interpreting specific language contained within the bankruptcy code,
2 the Court went on to say that the reasonably equivalent value in its application to mortgage
3 foreclosure sales cannot mean the fair market value. *Id.* at 545. Rather, “a fair and proper price, or
4 a ‘reasonably equivalent value,’ for foreclosed property, is the price in fact received at the
5 foreclosure sale, so long as all the requirements of the State’s foreclosure law have been complied
6 with.” *Id.*

7 While this case dealt with the specific phrase “reasonably equivalent value” as contained in
8 the bankruptcy code, the Court’s finding is persuasive here since it discussed in detail the reasons
9 why fair market values are not reasonable guidelines for determining the purchase price one could
10 expect to receive at a foreclosure sale. However, the Court gave deference to state foreclosure
11 statutes, and this one statement from the Supreme Court does not stand on its own. Contrary to
12 Plaintiff CDA’s position, the Court also noted that while the mere inadequacy of a foreclosure sale
13 price does not provide a basis for setting a foreclosure aside, a sale may be set aside “if the price is
14 so low as to shock the conscience or raise a presumption of fraud or unfairness.” *Id.* at 542 (internal
15 citations omitted).

16 The US Supreme Court did not detail how low a price would have to be in order to shock
17 the conscience or raise a presumption of fraud or unfairness. However, the Court pointed to several
18 cases in which courts specifically addressed this issue. After carefully considering these cases, the
19 prices obtained in the foreclosure sales, and the inconsistency in Plaintiff CDA’s practices, the
20 Court determined that it could not approve the sales. Contrary to Plaintiff CDA’s claim, the
21 confirmation was not denied based upon price alone. Rather, the confirmation was denied based
22 upon a combination of the low sale prices and Plaintiff’s inconsistent practices, which the Court
23 construed as strikingly unfair and inequitable. This decision seems to be in line with the law.

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1 **C. The *sua sponte* Order**

2 A “court’s function is generally limited to adjudicating the issues *raised by the parties...*”
3 *Vertex, Inc. v. City of Waterbury*, 278 Conn. 557, 564 (Conn. 2006); see also *Saipan Achugo Resort*
4 *Members’ Ass’n v. Wan Jin Yoon*, 2001 MP 12, ¶ 50 (“Our adversarial system relies on advocates to
5 inform the discussion and to bring issues to the Court’s attention.”). Our Rules of Practice and
6 Rules of Civil Procedure do not contain any rule allowing the trial court to *sua sponte* raise issues
7 but rather require parties to file written motions upon which the Court will render decisions. *Id.* at
8 564-65; see also NMI R. Prac. and NMI R. Civ. P. This general principle exists, in part, to
9 safeguard litigants’ due process right to be heard.

10 However, the Commonwealth Superior Court is a court of both law and equity. NMI Const.
11 art IV, § 2; 1 CMC § 3202. Under equitable principles, a trial court must ensure the overall fairness
12 of the proceedings before it. The foreclosure sale presented to the Court for approval raised the
13 Court’s suspicions about the overall fairness of the sale. The Court’s Order pointed out various
14 inequities in Plaintiff CDA’s practices, which go beyond this one sale. These inequities affect this
15 community as a whole, and the disparity in the way in which Plaintiff CDA disposes of its
16 foreclosure actions is alarming. Therefore, the Court was attempting to rectify these inequities in
17 the absence of an opposing party.

18 However, the Court does acknowledge that Plaintiff CDA was not given an adequate chance
19 to be heard prior the issuance of the original order. Plaintiff CDA has, however, had the
20 opportunity to raise its concerns in its motions for disqualification and reconsideration and
21 therefore, Plaintiff CDA has had an opportunity to be heard.

22 Moreover, the Court understands Plaintiff CDA’s need for a practical resolution of the
23 present case and therefore, an upset price hearing shall be conducted and will provide such a
24 resolution.

1 **1. Upset Price Hearing**

2 In providing for court oversight of judicial sales, jurisdictions allow for oversight following
3 a judicial foreclosure sale. *Saipan Achugao Resort Members' Association v. Yoon*, 2011 MP 12, ¶
4 36 [hereinafter *SARMA*] (citing Wash. Rev. Code § 61.12.060 (2011)). This subsequent oversight
5 allows the court:

6 Upon application for the confirmation of sale, if it has not theretofore fixed an upset
7 price, conduct a hearing, establish the value of the property, and, as a condition to
8 confirmation, require that the fair value of the property be credited upon the
foreclosure judgment. If an upset price has been established, the plaintiff may be
required to credit this amount upon the judgment as a condition to confirmation.

9 Wash. Rev. Code § 61.12.060 (2011).² An upset price is a minimum price, set by the court, to
10 which the mortgaged premises must be bid or sold at. *Id.* The upset price must reflect a fair price
11 for the property. A fair price is that amount a competitive bidder would consider to be a fair bid at
12 the time of sale under normal conditions. *National Bank v. Equity Investors*, 81 Wn.2d 886, 926
13 (Wash. 1973).

14 In deciding upon fair value at a foreclosure sale, the court may consider a variety of factors
15 including: (1) the state of the economy and local economic conditions, (2) the usefulness of the
16 property under normal conditions, its potential or future value, the type of property involved, (3) its
17 unique qualities, if any, and (4) any other characteristics and conditions affecting its marketability

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19 ² The full text of the statute is as follows:

20 In rendering judgment of foreclosure, the court shall order the mortgaged premises, or so much
21 thereof as may be necessary, to be sold to satisfy the mortgage and costs of the action. The payment
22 of the mortgage debt, with interest and costs, at any time before sale, shall satisfy the judgment. The
23 court, in ordering the sale, may in its discretion, take judicial notice of economic conditions, and after
24 a proper hearing, fix a minimum or upset price to which the mortgaged premises must be bid or sold
before confirmation of the sale.

25 The court may, upon application for the confirmation of a sale, if it has not theretofore fixed an upset
26 price, conduct a hearing, establish the value of the property, and, as a condition to confirmation,
27 require that the fair value of the property be credited upon the foreclosure judgment. If an upset price
28 has been established, the plaintiff may be required to credit this amount upon the judgment as a
29 condition to confirmation. If the fair value as found by the court, when applied to the mortgage debt,
30 discharges it, no deficiency judgment shall be granted.

1 along with any other factors which such a bidder might consider in determining a fair bid for the
2 mortgaged property. *Id.* To make this determination, the “court may properly receive any
3 competent evidence, whether opinion or of direct facts which might affect the amount of such a
4 bid.” *Id.*

5 Here, in its Order Denying Confirmation and Certification of Sale of Foreclosed Property,
6 the Court expressed its concerns with Plaintiff CDA’s actions regarding foreclosure sales. To
7 alleviate these concerns, the Court has decided that additional oversight of the judicial sale is
8 necessary to “assure a reasonable return from the sale.” 7 CMC § 4537(e). To implement this
9 oversight, the Court adopts the procedures set forth in the Washington Revenue Code.

10 Therefore, a hearing shall be held, at which, Plaintiff CDA shall offer evidence to aid in the
11 Court’s determination of an upset price for the properties.³ After an upset price has been
12 determined, Plaintiff CDA may then proceed with judicial confirmation of the foreclosure sale. If
13 Plaintiff CDA chooses to proceed with the sale, they must proceed aware that any deficiency
14 between the upset price and the price received at the foreclosure sale will be credited against any
15 deficiency judgment Plaintiff CDA may have against the defendants.

16 **2. Future Foreclosure Action Procedure**

17 The Court also understands that Plaintiff CDA encounters foreclosure proceedings like the
18 present matter frequently, therefore, to avoid future confusion this Court will now clarify the
19 procedure that shall be followed for actions such as these in the future. An upset hearing shall be
20 conducted prior to a foreclosure sale and thereafter the Court will set an upset price for the property.
21 At the upset hearing, the plaintiff shall submit proper documentation evidencing the value of the
22 property.

23 _____
24 ³ One possible piece of evidence that Plaintiff CDA may attempt to obtain is a Broker’s Price Opinion or “BPO”, which
is discussed more thoroughly below.

