



FOR PUBLICATION



E-FILED  
CNMI SUPERIOR COURT  
E-filed: Oct 31 2016 04:44PM  
Clerk Review: N/A  
Filing ID: 59763716  
Case Number: 13-0194-CV  
N/A

By order of the Court, Presiding Judge Robert C. Naraja

3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

IN THE SUPERIOR COURT  
FOR THE  
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

COMMONWEALTH DEVELOPMENT	)	CIVIL ACTION NO. 13-0194
AUTHORITY,	)	
	)	ORDER SETTING
Plaintiff,	)	UPSET PRICE HEARING
v.	)	
	)	
VINCENT A. MANGLONA, BENITA A.	)	
MANGLONA, V.B. MANGLONA	)	
ENTERPRISES, TONGA GARDENS,	)	
PASEO DRIVE INCORPORATED, GUAM	)	
ISLA LP GAS AND APPLIANCE and	)	
MOBIL OIL MICRONESIA, INC.,	)	
	)	
Defendants.	)	
	)	

I. INTRODUCTION

On July 21, 2016, attorney Vicente T. Salas filed with the Court a certificate of sale and a request to have the Court confirm the sale of four parcels of land. The sale was performed pursuant to the Court's Writ of Execution, entered on April 4, 2016. Specifically, the Writ of Execution authorized the sale of all pro se Defendants Vincent A. Manglona and Benita A. Manglona's rights, title, and interests in the following real properties located on Rota, CNMI, legally described as:

**Tract No. 22102**, Rota, containing an area of 25,000 square meters, as more particularly described on Drawing/Cadastral Plat No. 2048/77 the original of which was registered 23 APR 79 as Document No. 8162 at Land Registry, Saipan.

**Tract No. 22214**, Rota, containing an area of 25,000 square meters, as more particularly described on Drawing/Cadastral Plat No. 3017/87 the original of which was registered 28 FEB 89 as Document No. 89-0624 at Commonwealth Recorder's, Saipan.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

**Lot No. 053 R 01**, Rota, containing an area of 535 square meters, as more particularly described on Drawing/Cadastral Plat No. 053 R 00 the original of which was registered 19 JAN 94 as Document No. 94-0176 at Land Registry, Saipan.

**Lot No. 001 R 07**, Rota, containing an area of 836 square meters, as more particularly described on Drawing/Cadastral Plat No. 001 R 00 the original of which was registered 21 NOV 71 as Document No. 1288 at Land Registry, Saipan.

The certificate of sale also states who bought each property and the price paid: Priscilla T. Tenorio, Trustee of the Priscilla T. Tenorio Trust, purchased Tract No. 22214 for \$48,100; Commonwealth Development Authority (“CDA”) purchased Tract No. 22102 for \$60,000; CDA purchased Lot No. 053 R 01 for \$10,000; and CDA purchased Lot No. 001 R 07 for \$16,000.

At this time, the Court is not prepared to confirm the sale of the foregoing parcels of land. The Court finds that it is appropriate to conduct an upset price hearing to ensure that the purchase prices paid at auction were not “grossly inadequate.”

**II. DISCUSSION**

Under 7 CMC § 3401, the court looks to written law, local custom, the Restatements, as well as the common law as generally understood by the states, in that order.<sup>1</sup> 7 CMC § 3401 provides a hierarchy of authorities for the Court to apply. Here, the Court has the power to order an upset price hearing because the Restatement (Third) of Property: Mortgages § 8.3(a) (1997), the NMI Supreme Court’s ruling in *In re Commonwealth Development Authority*, 2016 MP 4, as well as the practice of numerous courts<sup>2</sup> suggests that ordering such a hearing is appropriate.

---

<sup>1</sup> Specifically, 7 CMC § 3401 states “[i]n all proceedings, the rules of the common law, as expressed in the restatements of the law approved by the American Law Institute and, to the extent not so expressed as generally understood and applied in the United States, shall be the rules of decision in the courts of the Commonwealth, in the absence of written law or local customary law to the contrary . . .”

<sup>2</sup> *E.g.*, *Nat’l Bank of Wash. v. Equity Investors*, 506 P.2d 20, 42–44 (Wash. 1973); *Hayes v. Alaska USA Fed. Credit Union*, 767 P.2d 1158, 1161–63 (Alaska 1989); *Teachers’ Retirement Fund Ass’n v. Pirie*, 46 P.2d 105, 106–08 (Or. 1935); *Federal Title & Mortgage Guaranty Co. v. Lowenstein*, 166 A. 538, 541 (N.J. 1933).

1           **1. The Restatement (Third) of Property: Mortgages Grants the Court the Power to**  
2           **Review Foreclosure Sales**

3           Pursuant to 7 CMC § 3401, when there is no written law or local custom on a given legal issue  
4 then the Court is required to follow the Restatements. Here, there is no written law or local custom  
5 dictating whether the Court can review a foreclosure sale; as such, the Court looks to the  
6 Restatements. Restatement (Third) of Property: Mortgages § 8.3(a) states that a court can set aside a  
7 foreclosure sale when the price obtained is “grossly inadequate.” See *In re Commonwealth*  
8 *Development Authority*, 2016 MP 4 ¶ 12. In *In re Commonwealth Development Authority*, the NMI  
9 Supreme Court articulated that the trial court has discretion to review foreclosure sales under the  
10 Restatement. 2016 MP 4 ¶ 12. Moreover, the NMI Supreme Court stated that there is no precise  
11 percentage at which a sale price is “grossly inadequate,” but that anything below 20% of the  
12 appraised value is not, as a matter of law, an abuse of discretion. The Court has authority to review  
13 foreclosure sales after they take place to ensure that a fair price was obtained and applied toward the  
14 debt to be extinguished.

15           In this case, the Court orders an upset price hearing in order to gather information and hear  
16 arguments on the issue of whether the prices paid at the foreclosure sale were adequate. The Court  
17 exercises its discretion under the Restatement to ensure that the prices paid are not “grossly  
18 inadequate.”

19           **2. The Court’s Sua Sponte Review Power**

20           In *In re Commonwealth Development Authority*, the NMI Supreme Court also articulated that a  
21 trial court can sua sponte exercise its discretion to review a foreclosure sale under Restatement  
22 (Third) of Property: Mortgages § 8.3(a). 2016 MP 4 ¶ 14. Specifically, the NMI Supreme Court  
23 placed emphasis on the fact that when a court reviews a foreclosure sale and/or confirms a sale it is  
24 not a mere ministerial act and as such a sua sponte review is justifiable. *Id.* Sua sponte review of

1 foreclosure sales is a supported exercise of the Court’s discretion. *Id.* In this case, the Court  
2 exercises its discretion to review the sales in question sua sponte.

### 3 **3. Upset Price Hearings Are the Judicial Vehicle Employed by Many Courts**

4 In addition to the Restatement (Third) of Property: Mortgages and the NMI Supreme Court’s  
5 ruling in *In re Commonwealth Development Authority*, the Court’s decision to order an upset price  
6 hearing is supported by the practice of numerous jurisdictions. Under 7 CMC § 3401, when written  
7 law, local custom, and the Restatements are silent then the Court looks to the common law “as  
8 generally understood and applied in the United States.” Currently, written law, local custom, and  
9 the Restatements do not clearly address the use of an upset price hearing so the Court looks to the  
10 practice of United States jurisdictions.

11 Numerous jurisdictions within the United States employ upset price hearings. An upset price  
12 hearing is merely one of the many judicial vehicles by which the court can exercise its authority to  
13 review the price obtained at a foreclosure sale. *See, e.g., Nat’l Bank of Wash.*, 506 P.2d at 42–44;  
14 *Hayes*, 767 P.2d at 1161–63; *Teachers' Retirement Fund Ass'n v. Pirie*, 46 P.2d at 106–08; *Federal*  
15 *Title & Mortgage Guaranty Co. v. Lowenstein*, 166 A. at 541.

16 For example, in *National Bank of Washington*, the court set an upset price under the rationale  
17 that when competitive bidding may have failed to produce a sale price equivalent to the value of the  
18 property the court should hold a hearing to analyze the price obtained at auction. 506 P.2d at 42–44.  
19 The *National Bank of Washington* court relied on the Restatement as well as the practice of other  
20 jurisdictions to justify ordering an upset price hearing. Similarly to the *National Bank of*  
21 *Washington* court’s reasoning, this Court recognizes the need and practice of jurisdictions to use  
22 upset price hearings to review foreclosure sale prices.

23 Further, *Hayes* highlights the widespread use of upset price hearings by courts. 767 P.2d at  
24 1158. In *Hayes* the court concluded:

1 the authority to set an upset price derives from the inherent equitable power of a  
2 court to oversee judicial foreclosure sales. It has long been recognized that courts of  
3 equity have extensive inherent power in supervising judicial sales and wide  
4 discretion in the exercise of that power.

5 *Id.* at 1159. The *Hayes* court supported its holding by citing to cases from Oregon, New Jersey,  
6 New York, Arkansas, Oklahoma, Kentucky, and Mississippi, all of which supported the use of  
7 upset price hearings. *Id.* at 1160–61.

8 *National Bank of Washington, Hayes*, and their progeny illustrate that numerous courts order  
9 upset price hearings when analyzing the sufficiency of a foreclosure sale price. Moreover, most  
10 jurisdictions give their courts wide discretion when analyzing whether a foreclosure sale should be  
11 approved. *See Nat'l Bank of Wash.*, 506 P.2d at 42–44; *Hayes*, 767 P.2d at 1161–63. Here, the  
12 Court has determined that ordering an upset price hearing is needed because the Court wants to  
13 ensure that the price paid for each parcel was not grossly inadequate.

14 In sum, after reviewing the Restatement (Third) of Property: Mortgages, the NMI Supreme  
15 Court's approval of sua sponte review in *In re Commonwealth Development Authority*, and the  
16 practice of jurisdictions to order upset price hearings it is evident to the Court that it is well within  
17 its power to order an upset price hearing in this case.

17 //  
18 //  
19 //  
20 //  
21 //  
22 //  
23 //  
24 //

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

**III. CONCLUSION**

Based on the foregoing, the Court **ORDERS** an upset price hearing be held on **November 16, 2016, at 9:00 a.m.** in Courtroom 202. CDA is the creditor in whose favor the sale was held. As such, the Court **ORDERS** CDA to appear and present the Court with broker appraisals covering the last six months for Tract No. 22102, Tract No. 22214, Lot No. 053 R 01, and Lot No. 001 R 07.

**IT IS SO ORDERED** this 31st day of October, 2016.

/s/ \_\_\_\_\_  
ROBERT C. NARAJA  
Presiding Judge