IN THE
SUPREME COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

IN RE COMMONWEALTH DEVELOPMENT AUTHORITY,
Petitioner.

Supreme Court No. 2016-SCC-0007-PET

Superior Court No. 03-0609-CV

OPINION

Cite as: 2016 MP 4

Decided May 4, 2016

George L. Hasselback, Saipan, MP, for Petitioner.

BEFORE: ALEXANDRO C. CASTRO, Chief Justice; JOHN A. MANGLONA, Associate Justice; TIMOTHY H. BELLAS, Justice Pro Tem.

MANGLONA, J.:

¶ 1 Petitioner Commonwealth Development Authority ("CDA") seeks a writ of mandamus directing the trial court to vacate its Order Scheduling Upset Price Hearing and a writ of prohibition preventing the trial court from holding similar hearings in other cases. For the reasons below, we DENY the petition.

I. FACTS AND PROCEDURAL HISTORY

¶ 2 CDA holds a judgment against the estate of Ponciano Cruz Rasa and Vivian P. Rasa (hereinafter collectively referred to as "Rasa") in the amount of $85,732.52 plus interest. Pursuant to 2 CMC § 4537(e),[1] the trial court issued a writ of execution that commanded a representative of CDA to "sell the [real property of Rasa], in the manner provided by law, at public auction; . . . [and] to apply the rents, profits and proceeds of the sale in accordance with the law . . . ." *Commonwealth Dev. Auth. v. Estate of Rasa*, Civ. No. 03-0609 (NMI Super. Ct. Jan. 18, 2013) (Writ of Execution at 3). After the lot was sold at public auction, CDA applied for an order confirming the sale of the property. The trial court denied confirmation of the sale because the foreclosed property sold at an amount of less than twenty percent of its appraised value.[2] The court then issued an order scheduling an upset price hearing. The purpose of that hearing was to elicit information on a variety of factors that would influence the court's decision in setting a minimum foreclosure sale price, or "upset price," for the Rasa property.

II. JURISDICTION

¶ 3 We have jurisdiction over a writ petition. NMI CONST. art. IV, § 3.

III. DISCUSSION

¶ 4 "Writs, whether of mandamus or prohibition, are extraordinary relief granted only in the 'most dire of instances.'" *In re San Nicolas*, 2013 MP 8 ¶ 9 (quoting *In re Buckingham*, 2012 MP 15 ¶ 7). We consider the five *Tenorio* factors when evaluating whether to issue a writ of mandamus or prohibition:

> 1. The party seeking the writ has no other adequate means, such as a direct appeal, to attain the relief desired;
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> 2. The petitioner will be damaged or prejudiced in a way not correctable on appeal;

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[1] This section states that "[w]hen the mortgagor, after being directed to do so . . . fails to pay the principal, interest, costs, and attorney's fees at the time directed in the order, the court shall order the property . . . to be sold . . . ." 2 CMC § 4537(e). It then provides the procedure for a sale of property under a judgment of foreclosure.

[2] The property sold for 17.6% of its appraised value: it sold at auction for $3,000, and its appraised value is $17,000.

> 3. The lower court's order is clearly erroneous as a matter of law;
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> 4. The lower court's order is an oft-repeated error, or manifests a persistent disregard of applicable rules; and
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> 5. The lower court's order raises new and important problems, or issues of law of first impression.

Commonwealth v. Namauleg, 2009 MP 13 ¶ 5 (citing *Tenorio v. Commonwealth*, 1 NMI 1, 9–10 (1989)). We first examine the third *Tenorio* factor because a failure to establish this factor will result in denial of the petition. *Buckingham*, 2012 MP 15 ¶ 10.

A. Clear Error

¶ 5 CDA contends the trial court erroneously considered the sale price in its order denying judicial confirmation of the sale. It argues that the trial court should not have relied on the Restatement (Third) of the Law of Property: Mortgages ("Restatement") to support its denial of confirmation because Commonwealth law expressly controls judicial confirmation of the certificate of sale. Alternatively, CDA argues that even if the Restatement is applicable, the court erred because the Restatement supports confirmation of the sale, and common law supports neither sua sponte review of an application for confirmation nor the scheduling of upset price hearings.

¶ 6 "We will only find clear error if no 'rational and substantial legal argument can be made in support of the questioned . . . ruling even though on normal appeal a reviewing court may find reversible error.'" *San Nicolas*, 2013 MP 8 ¶ 9 (quoting *Buckingham*, 2012 MP 15 ¶ 10).

i. Applicability of the Restatement

¶ 7 In the absence of written law or local customary law, the Restatements of the Law "shall be the rules of decision in the courts of the Commonwealth." 7 CMC § 3401. Written law includes "the NMI Constitution and NMI statutes, case law, court rules, legislative rules, and administrative rules, as well as the Covenant and provisions of the U.S. Constitution, [and] laws and treaties applicable under the Covenant." *Buckingham*, 2012 MP 15 ¶ 12 (quoting *Estate of Ogumoro v. Han Yoon Ko*, 2011 MP 11 ¶ 59 n. 21).

¶ 8 CDA argues that application of the Restatement was error because Commonwealth statutes and case law directly address whether the court can deny confirmation of the sale based on price. In support of its argument, CDA cites to 2 CMC §§ 4537(e), 4537(f), 4537(j), and *Saipan Achugao Resort Members' Ass'n v. Wan Jin Yoon*, 2011 MP 12.

¶ 9 CDA's argument is unpersuasive because "[n]either 2 CMC § 4537(f) nor any other provision refers to confirmation of a judicial foreclosure sale," *Saipan Achugao Resort Members' Ass'n*, 2011 MP 12 ¶ 32, let alone directly address whether the court can deny judicial confirmation of a foreclosure sale

based on an inadequate price.[3] Further, *Saipan Achugao Resort Members' Ass'n* does not explicitly articulate the circumstances under which a trial court may deny judicial confirmation of a foreclosure sale. There, we held that "a trial court has authority to enter an order confirming a judicial foreclosure sale," stating that judicial confirmation was "consistent with the judicial oversight established by [2 CMC § 4531]"[4] and "allows the trial court to ensure that 'the sale has been made in due compliance with the provisions of the decree ordering that sale . . . .'" *Saipan Achugao Resort Members' Ass'n*, 2011 MP 12 ¶¶ 33, 37 (quoting *Travelers Indem. Co. v. Heim*, 388 N.W.2d 106, 108 (Neb. 1986)).

¶ 10 Here, the trial court did not clearly err by referring to the Restatement because CDA has not identified, and we cannot find, any written or local customary law that addresses whether judicial confirmation of a foreclosure sale may be denied on the basis of the foreclosure sale price.

ii. Judicial Confirmation and the Restatement

¶ 11 CDA asserts that proper application of the Restatement would have led to confirmation of the sale. It argues that the Restatement does not support the trial court's order denying confirmation because "[t]he reality of the body of common law is that sales are not set aside based on inadequacy of price alone." Pet'r's Br. 20.

¶ 12 The Restatement states that "[a] foreclosure sale price obtained pursuant to a foreclosure proceeding that is otherwise regularly conducted in compliance with applicable law does not render the foreclosure defective unless the price is grossly inadequate." Restatement (Third) of Property: Mortgages § 8.3(a) (1997); *see also, e.g.*, *Gelfert v. National City Bank*, 313 U.S. 221, 232 (1941) ("[I]t is quite uniformly the rule in this country, as in England, that while equity will not set aside a sale for mere inadequacy of price, it will do so if the inadequacy is so great as to shock the conscience . . . ."). To determine whether the sale price is grossly inadequate, courts compare the sale price and the fair market value of the property. Restatement (Third) of Property: Mortgages § 8.3(a) cmt. b (1997). The fair market value is "the price which would result

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[3] Title 2, Section 4537(f) of the Commonwealth Code states that "[w]henever any real property shall be sold under judgment of foreclosure . . . the person making the sale must give to the purchaser a certificate of sale." It then provides the requirements of a certificate of sale and the procedure to be followed at the time of expiration for redemption of the property.

Section 4537(j) states that "[u]pon motion by an aggrieved party . . . the court may vacate a foreclosure sale and order a new sale upon a finding 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."

[4] Title 2, Section 4531 of the Commonwealth Code states that "[n]o mortgage may be foreclosed other than by the judicial remedies provided by this chapter."

from negotiation and mutual agreement, after ample time to find a purchaser, between a vendor who is willing, but not compelled to sell, and a purchaser who is willing to buy, but not compelled to take a particular piece of real estate." *Id.* A court can justifiably deny confirmation of a certificate of sale if the foreclosure sale price is less than twenty percent of the fair market value. *Id.*

¶ 13 Here, there is a rational and substantial legal argument that supports the trial court's order denying confirmation of the sale based on the "grossly inadequate" sale price, because the property sold for less than eighteen percent of its appraised value;[5] therefore, the trial court's order was not clearly erroneous as a matter of law.

iii. Sua Sponte Review of Application for Confirmation of Sale

¶ 14 CDA argues that the trial court erred by evaluating the merits of CDA's application sua sponte. In *Saipan Achugao Resort Members' Ass'n*, we stated that judicial confirmation "allows the trial court to ensure that 'the sale has been made in due compliance with the provisions of the decree ordering that sale . . . .'" 2011 MP 12 ¶ 33 (quoting *Travelers Indem. Co.*, 388 N.W.2d at 108). This implies that "the act of confirmation is . . . more than a mere formal or ministerial act." *State ex rel. Talens v. Holden*, 164 P. 595, 597 (Wash. 1917). Because confirmation involves judicial discretion and ensures the price is not "grossly inadequate," there is a rational and substantial legal argument that the court may sua sponte exercise its discretion and deny an unopposed application on the basis of an inadequate sale price. *See id.* ("[The act of confirmation] clearly involves judicial discretion when objections thereto are made, and when the effect of the order is considered, it must do so we think even though standing unopposed.").

iv. Upset Price Hearing

¶ 15 Last, CDA asserts that the trial court erred by scheduling an upset price hearing because the court failed to justify its implementation of such hearings. The trial court stated its oversight of judicial sales authorized the court to schedule an upset price hearing pursuant to Washington Revised Code § 61.12.060.[6] When written law, local customary law, and the Restatement of

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[5] We note that "'gross inadequacy' cannot be precisely defined in terms of a specific percentage of appraised value" and that "a court may be justified in approving foreclosure price that is less than 20 percent of appraised value if the court determines that market prices are falling rapidly and that the appraisal does not take adequate account of recent declines in value as of the date of the foreclosure." Restatement (Third) of Property: Mortgages § 8.3(a) cmt. b (1997).

[6] Washington Revised Code § 61.12.060 states that if a court has not fixed a "minimum or upset price to which the mortgaged premises must be bid or sold before confirmation of the sale," then in deciding whether to confirm a sale, the court may "conduct a hearing, establish the value of the property, and, as a condition to confirmation, require that the fair value of the property be credited upon the foreclosure judgment."

Law are not dispositive, the common law "as generally understood and applied in the United States" applies. 7 CMC § 3401; *see Commonwealth v. Lot No. 353 New G*, 2012 MP 6 ¶ 16 (surveying U.S. jurisdictions when Commonwealth authorities and the Restatement of Law are not dispositive). Although the trial court should have conducted a survey of United States jurisdictions to establish the appropriateness of scheduling an upset price hearing, CDA has not shown that scheduling an upset price hearing is contrary to the common law as generally understood and applied in the United States. Indeed, upset price hearings may be the procedure that the majority of United States jurisdictions follow. Thus, without argument from CDA as to what, if any, other procedure courts follow after denying judicial confirmation of a foreclosure sale based on price, we cannot conclude that the trial court's scheduling of an upset price hearing is unsupported by a rational and substantial legal argument. *See Kerr v. U.S. Dist. Court for N. Dist. of Cal.*, 426 U.S. 394, 403 (1976) (stating that the petitioner bears the burden of showing that issuance of the writ is "clear and indisputable" (quoting *United States v. Duell*, 172 U.S. 576, 582 (1899))).

IV. CONCLUSION

¶ 16 Because CDA has not shown that the trial court has clearly erred, we hereby DENY CDA's petition for a writ of mandamus and prohibition.

SO ORDERED this 4th day of May, 2016.

/s/
ALEXANDRO C. CASTRO
Chief Justice

/s/
JOHN A. MANGLONA
Associate Justice

/s/
TIMOTHY H. BELLAS
Justice Pro Tem