



THE SUPREME COURT OF BERMUDA
PRACTICE DIRECTION
ISSUED BY THE CHIEF JUSTICE

Ref. A/ 50

CIRCULAR NO. 9 OF 2013

SALE OF REAL PROPERTY IN EXECUTION OF JUDGMENTS

Order 46 rule 7 (2)

1. Order 46 rule 7(2) provides as follows:

“(2) Every sale in execution of a judgment shall be made under the direction of the Registrar and shall be conducted according to such orders, if any, as the Court may make on the application of any party concerned and shall be made by public auction:

Provided that the Court may in any case authorise the sale to be made in such other manner as it may deem advisable.”

Manner of conducting sales of real property in execution of judgments

2. Order 46 rule 7(2) prescribes sale by public auction as the standard mode of sale in the judgment execution process.
3. Current real estate market conditions have made the public auction an ineffective sale mechanism in the judgment execution context, be it a sale by the Provost Marshal General or a sale by a mortgagee in possession.
4. The proviso to Order 46 rule 7(2) empowers the Court to authorise the sale of property by way of execution otherwise than by public auction.
5. With a view to saving judgment creditors the cost and inconvenience of applying for leave to sell real estate on a case by case basis, the Court hereby authorises all sales of real property by way of execution to be carried out by private treaty or such other method as the Provost Marshal General and/or the judgment creditor, as the case shall be, may deem advisable.
6. Where private sales are conducted by mortgagees in possession, regard must still of course be had for the duty to obtain the best possible price at the time of the sale: *Edness-v- Bank of Bermuda Ltd.*[1998] Bda LR 51.
7. Where private sales are conducted on behalf of a judgment creditor by the Deputy Provost Marshal, regard must still of course be had to the desirability of consulting the judgment creditor and the judgment debtor on the terms of any proposed sale, and the advisability of seeking Court approval of any potentially controversial private sale terms: *Vaucrosson-v-Appleby Spurling Hunter*[2005] Bda LR 35.

Dated this 9th day of August, 2013



Ian R.C. Kawaley
Chief Justice

Cc: Attorney-General's Chambers/Bermuda Bar Association/Legal Aid Office/Magistrates Court