

J. Y. Interpretation No.253 (March 2, 1990) *

ISSUE: Is the provision of the Precautionary Matters on Handling Compulsory Execution, prescribing that a notice of auction should indicate that “a creditor who declares his or her willingness to bear the cost of a second auction prior to the date of such second auction may take at the lowest price of the previous auction,” unconstitutional ?

RELEVANT LAWS:

Articles 91 and 92 of the Compulsory Enforcement Act (強制執行法第九十一條、第九十二條) .

KEYWORDS:

notification of the auction date (拍賣期日通知) , re-auction (再拍賣) , facilitating the exercise of people’s rights in a timely manner (從速實現人民權利) .**

HOLDING: Paragraph 50 (5) of the Precautionary Matters on Handling Compulsory Enforcement, amended and published on October 18, 1982, by the Judicial Yuan, specifies that the notification of a real-property auction date should contain the following statement: “A credi-

解釋文：司法院七十一年十月十八日修正發布之辦理強制執行事件應行注意事項，其中第五十則(五)關於拍賣不動產期日通知書，應記載：「於再行拍賣期日前，債權人聲明願負擔再行拍賣之費用者，仍得照前次拍賣之最低價額承受之」之規定，係依強制執行法

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tor who declares willingness to bear the expenses of a re-auction before the re-auction date may assume the property to be at the lowest bid price of the previous auction.” This provision is enacted under Articles 91 and 92 of the Compulsory Enforcement Act to facilitate the exercise of people’s rights in a timely manner; therefore, it is not unconstitutional.

REASONING: The Judicial Administration Agency issues the judicial administration orders. If such orders are cited by the judge in the decision at hand, the party may seek interpretation by the Constitutional Court of this Yuan, which delivered Interpretation No. 216. The Precautionary Matters on Handling Compulsory Enforcement are cautious judicial administration orders issued by the Judicial Administration Agency and were cited by the judge in the decision at hand. Thus, the petition for interpretation shall be granted for review.

Article 91 of the Compulsory Enforcement Act mandates that if the real property being auctioned is not sold, or if

第九十一條及第九十二條意旨所為，乃在求人民權利之從速實現，與憲法尚無牴觸。

解釋理由書：司法行政機關所發司法行政上之命令，如經法官於裁判上引用者，當事人得聲請本院大法官會議解釋，業經本院以釋字第二一六號解釋在案，前開辦理強制執行事件應行注意事項，係司法行政機關所發之司法行政上注意命令，既經法官於裁判上引用，依上述解釋意旨，在程序上應予受理。

強制執行法第九十一條規定：
「拍賣之不動產，無人應買或應買人所出之最高價未達拍賣最低價額，而債權

the buyer's bid price is lower than the minimum required price, the auction agency should set the minimum price at the lowest bid price, transfer the real property and title transfer documents to the creditor, and set a new auction date. According to previous regulations, the new minimum price cannot be discounted more than 20 percent from the original price. Following this rule, the new minimum price should be lower than the previous minimum price.

Paragraph 50(5) of the Precautionary Matters on Handling Compulsory Enforcement, amended and published on October 18, 1982, by the Judicial Yuan, specifies that the notification of a real property auction date should contain the following statement: "A creditor who declares willingness to bear the expenses of a re-auction before the re-auction date may assume the property to be at the lowest bid price of the previous auction." This statement is consistent with the regulation and is therefore not unconstitutional.

人願承受者，執行法院應依該次拍賣所定之最低價額，將不動產交債權人承受，並發給權利移轉證書，其不願承受或依法不得承受者，由執行法院定期再行拍賣」。「依前項規定再行拍賣時，執行法院應酌減拍賣最低價額，酌減數額不得逾百分之二十」。同法第九十二條規定：「再行拍賣期日，無人應買或應買人所出之最高價，未達於減定之拍賣最低價額者，準用前條之規定；如再行拍賣，其酌減數額，不得逾減定之拍賣最低價額百分之二十」。依上述規定，再行拍賣期日最低價額，應較前次拍賣最低價額為低。

司法院七十一年十月十八日修正發布之辦理強制執行事件應行注意事項，其中第五十則(五)關於拍賣不動產期日通知書，應記載：「於再行拍賣期日前，債權人聲明願負擔再行拍賣之費用者，仍得照前次拍賣之最低價額承受之」之規定，即係因在通常情形，前次拍賣之最低價額，恆較再行拍賣之價額為高，符合上開法律意旨，乃在求債權人權利之從速實現，並兼顧債務人之利益，與憲法保障人民財產權之本旨，尚無牴觸。

The abovementioned regulation presents no problems if the two auction dates are not far apart and prices are not rising. If inflation occurs, however, and the property is not re-evaluated and the period of assumption is not defined, it is possible that the property to be assumed may be undervalued. The agency should therefore consider the special circumstances and amend the relevant regulations accordingly.

Justice Chien-Tsai Cheng filed dissenting opinion.

Justice Teh-Sheng Chang filed dissenting opinion.

Justice Zu-Zan Yang filed dissenting opinion.

前開規定，於兩次拍賣期日相距不久，而再行拍賣期日前，物價平穩之通常情形下，固無不妥，惟物價於此期間內如大幅上漲，若不另行估價拍賣，又無承受之確定期間，即難免有承受價額較市價偏低之可能，有關法令，自應斟酌此項異常狀況檢討修正，併此說明。

本號解釋鄭大法官健才、張大法官特生、楊大法官日然分別提出不同意見書。