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Practice in Mortgage Remedies in Ontario (Fifth Edition)

Marriott and Dunn

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Marriott and Dunn: Practice in Mortgage Remedies in Ontario, 5th Edition, provides the most comprehensive step-by-step review of the procedures governing foreclosure, judicial sale, and power of sale in Ontario. Fifteen chapters provide the busy practitioner with a ready reference to every aspect of the power of sale remedy with the most comprehensive case law review of the process in Ontario. The notice of sale itself, including parties to be served and the service requirements, sale without notice, the right to redeem, injunctive relief, the marketing process, the mortgagee's duties in conducting the sale, the registration process, accounting for the sale proceedings and costs receive chapter-by-chapter coverage.

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This release features updates to the case law and commentary in Chapters 1 (Preliminary Considerations), 10 (Taking Accounts on the Reference), 16 (Redemption Action), 20 (Costs), 25 (Exercising the Power of Sale), 43 (Statutory Priorities & Liens), 44 (Interest), 48 (Residential Rental Premises), 52 (Receivers and Managers), 54 (Court Appointments), 62 (Marine Mortgages — Generally), and 63 (Marine Mortgages — Enforcement).

- **§ 25:7 — Power of Sale Where No Standard Charge Terms Specified** — In *Wilson v. Gooden-Allen*, 2017 ONSC 3197, 2017 CarswellOnt 14320, which set out the basis for sale of property by a chargee, it confirmed the following principle at paragraph 63: The basis for the sale of property by a charge under the covenants of a charge can be found in the terms of the charge as a matter of contract, or under the statutory powers to sell a property for the recovery of the unpaid principle owing pursuant to section 24 of the Mortgages Act. Provided that all technical aspects of the Mortgages Act are met, the chargee is in a position to sell the property at law upon giving all proper written notice under section 31, subject to any prior encumbrances.
- **§ 52:13 — Sale of the Mortgaged Property** — In *QRD (Willoughby) Holdings Inc. v. MCAP Financial Corporation*, 2024 CarswellBC 2618, 2024 BCCA 318 (C.A.), the court found that the judge of first instance had failed to sufficiently weigh the considerations under the Soundair principles in approving a sale by a receiver. The court noted that the receiver had listed the property for just 2.5 months and had failed to obtain an appraisal. Notwithstanding that the property had a “burn rate” of approximately \$400,000/month in interest and carrying costs, the court was satisfied that the receiver ought to have done more to consider other potential bids. However, the appeal was ultimately dismissed as the appellant did not adduce any fresh evidence of additional bids at the appeal that would have merited setting aside the sale.
- **§ 63:18 — Mareva Injunctions** — On a motion to continue a mareva injunction, the moving party must satisfy the court that the order should stand. The moving party must show that it is just and convenient in the circumstances to continue the order: see *O2 Electronics Inc. v. Sualim*, 2014 ONSC 5050, 2014 CarswellOnt 12203 (Ont. S.C.J.) and *Chicago Title Insurance v. John Doe*, 2024 ONSC 4793, 2024 CarswellOnt 13253 (Ont. S.C.J.).