

2016.06.14

### **3.9 Deputy M. Tadier of the Attorney General regarding what the role of the Viscount's office and the Jurats is in a Remise des Biens: [9489]**

Will Her Majesty's Attorney General advise what the role of the Viscount's office and the Jurats is in a *remise des biens* and whether they have a duty to get the best value from the sale of a property or whether they can dispose of a property in a quick sale in which only secured creditors recover their money?

#### **Mr. R.J. MacRae, Q.C., H.M. Attorney General:**

A *remise des biens* is a form of insolvency remedy available to a person who is in debt and owns land in Jersey. For a *remise* to be successful, it is essential the value of a property is sufficient to repay in full the debts due to secured creditors, for example, a mortgage lender, and able to pay at least part of the debts due to any unsecured creditors. *Remise* is a discretionary remedy and a *remise* is only ever granted on the application of a debtor. When an application is made for *remise*, a court will appoint 2 Jurats to investigate the debtor's assets and liabilities. The Jurats have 15 days within which to report the value of the property to the court and to state whether a *remise* would be useful, that is to say, the value of the property would exceed the secured claims on it. Following the Jurats' report, the court will grant or refuse the application for a *remise*. If the court grants the *remise*, 2 other Jurats are appointed by the court to sell the property and distribute the sale proceeds to the creditors. This process normally takes 6 months but can be extended to one year. Part of the reason for the relatively short timescale is that of course interest will accrue against secured debts which may erode or even exhaust any surplus. The 6-month period is not intended to effect a fire sale but a sensible period of time to achieve a realistic price in the context of increasing debts and creditors. The Jurats will aim to achieve the best sale price they can for the property, normally by sale on the open market. They must ensure, however, that the sale proceeds are enough to pay the secured creditors. If they cannot the *remise* will fail and another insolvency procedure like a *désastre* or *dégrévement* may follow. While the Jurats are responsible for the sale of a property and distributing the proceeds to the creditors, they are assisted by a member of the Viscount's insolvency team who provide support. The Viscount's Insolvency Department may support the process and make recommendations to the Jurats; the Jurats decide ultimately whether or not to accept an offer for the property. At the end of the process, if the *remise* is successful, then a debtor will be discharged from all his debts, including those of unsecured creditors who may of course not have been paid. Therefore, a *remise* can be a beneficial procedure for a debtor.

#### **3.9.1 Deputy M. Tadier:**

I thank the Attorney General for his initial answer. Would he give an indication of what he thinks is the shortest acceptable period during which one of these sales could occur?

#### **The Attorney General:**

All I can say is that they normally last between 6 and 12 months. That is the period of customary law.

#### **3.9.2 Deputy M.R. Higgins:**

I may have one or 2 questions for the Attorney General. The first one: the Attorney General mentioned that it was to do with Jersey property but is not a property held outside the Island also taken into account in a *remise*?

#### **The Attorney General:**

I am thankful for the Deputy Viscount, who is in court, who of course is an expert in this area. The position is that the debtor will declare all its property but the jurisdiction to grant a *remise* is only engaged if the debtor owns property in the Island.

**3.9.3 Deputy M.R. Higgins:**

I thank you for the answer. Secondly, can the Attorney General tell me what the role of the debtor whose property is being sold is in this process? Do they work with the Jurats? Do they work with the Viscount's office in order to achieve the best possible price for the property? Because it is in the interests of both parties surely that it is.

**The Attorney General:**

Yes, the debtor has a duty to assist the Viscount and the Jurats.

**3.9.4 Deputy M.R. Higgins:**

Finally, I have learnt about the *remise*; I have been looking at it recently. Can I ask the question: in the event that the process has been granted by the court, it is going through its process and everything else and the property is being sold for a lower price than could be achieved, is there any right of appeal on the part of the debtor against the actions of the Jurats in selling the property?

**The Attorney General:**

There is no right of appeal as such. The debtor could make an application to the Royal Court lodging an objection but there is no right of appeal. The decision of the Jurats is final.

**3.9.5 Deputy M.R. Higgins:**

One final question, if I may? Is that Human Rights compliant?

[10:45]

**The Attorney General:**

It is not a point I have considered but it is not a point that has been raised before.

**Deputy M.R. Higgins:**

Could I ask the Attorney if he does not mind visiting, say, a written opinion to the States in the near future?

**The Attorney General:**

Yes, of course.

**3.9.6 Deputy M. Tadier:**

I am glad Deputy Higgins is so knowledgeable on the subject. My last supplementary: is it ever the case that these sales take place by auction or is that unusual?

**The Attorney General:**

I cannot speak for the history of this matter but nowadays it would be very unusual. Normally it would be on the open market.