

High Court Amendment Rules (No 2) 1995

PURSUANT to section 51C of the Judicature Act 1908, Her Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, and with the concurrence of the Right Honourable the Chief Justice and at least two of the other members of the Rules Committee (of whom at least one was a Judge of the High Court), hereby makes the following rules.

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1 Title and commencement

- (1) These rules may be cited as the High Court Amendment Rules (No 2) 1995, and shall be read together with and deemed part of the High Court Rules from time to time set out in Schedule 2 to the Judicature Act 1908 (hereinafter referred to as the High Court Rules).
- (2) Except as provided in rule 2(2) of these rules, these rules shall come into force on the 1st day of August 1995.

2 References to Secretary for Justice

- (1) Rules 213(1), 217(2), 218, 224, and 329(3) of the High Court Rules are hereby amended by omitting the words “Secretary

for Justice” wherever they occur, and substituting in each case the words “chief executive of the Department for Courts”.

- (2) This rule shall come into force on the 1st day of July 1995.

3 Compliance with notice

Rule 294(a) of the High Court Rules is hereby amended—

- (a) By omitting the expression “14 days”, and substituting the expression “28 days”; and
- (b) By omitting the expression “28 days”, and substituting the expression “42 days”.

4 Order of sale of land and chattels

The High Court Rules are hereby amended by revoking rule 602, and substituting the following rule:

“602

- (1) If both land and chattels belonging to the same person are taken in execution under the same writ of sale, the officer executing the writ shall, unless that person otherwise desires or the Court otherwise directs, cause the chattels to be sold first.
- “(2) The Court may, notwithstanding the desires of the person to whom the land and chattels belong, direct under subclause (1)—
 - “(a) That the land be sold first; or
 - “(b) That the land be sold at the same time as a specified chattel or a specified class of chattels.
- “(3) Where the proceeds of the sale of the chattels or of the land or of the land and some of the chattels are insufficient to satisfy the execution, the Officer executing the writ shall—
 - “(a) Where the chattels have been sold first, sell the land; and
 - “(b) Where the land has been sold first, sell the chattels; and
 - “(c) Where the land and some of the chattels have been sold first, sell the remaining chattels.”

5 Power of Judge to call conference and give directions

The High Court Rules are hereby amended by inserting, after rule 703 (as inserted by rule 20(1) of the High Court Amendment Rules 1991), the following rule:

“703A

- (1) For the purpose of ensuring that any appeal or intended appeal may be determined in a convenient and expeditious manner, and that all matters in dispute may be effectively and completely determined, a Judge may at any time, either on the application of any party or intended party or without any such application, and on such terms as that Judge thinks fit, direct the holding of a conference of parties or intended parties or their counsel presided over by a Judge.
- “(2) At any such conference the Judge presiding may—
 - “(a) Settle the issues to be determined;
 - “(b) Direct what persons shall be cited, or need not be cited, as respondents to the appeal, or direct that the name of any party be added or struck out;
 - “(c) Fix a time by which any affidavits or other documents shall be filed;
 - “(d) Fix a time and place for the hearing of the appeal;
 - “(e) Make an order in accordance with rule 713;
 - “(f) Give such other directions as may be necessary for the proper determination of the appeal.
- “(3) Notwithstanding any of the foregoing provisions of this rule, a Judge may, at any time before the hearing of an appeal has been commenced, exercise any of the powers specified in subclause (2) without holding a conference under subclause (1).”

6 Place for filing notice of appeal

Rule 707 of the High Court Rules (as substituted by rule 20(1) of the High Court Amendment Rules 1991) is hereby amended by revoking subclause (4).

MARIE SHROFF,
Clerk of the Executive Council.

Explanatory note

This note is not part of the rules, but is intended to indicate their general effect.

These rules amend the High Court Rules. Except for rule 2 (which comes into force on 1 July 1995), these rules come into force on 1 August 1995.

Rule 2: The amendments made by this rule are consequential upon the Department of Justice (Restructuring) Act 1995. These amendments (which come into force on 1 July 1995) replace the existing references in the High Court Rules to the Secretary for Justice with references to the chief executive of the Department for Courts.

Rule 3 extends the time within which a party served with a notice for discovery must comply with it.

Under the existing rule 294(a) the time allowed for compliance with a notice for discovery must be not less than 14 days after the day on which the notice for discovery is served on the party required to give discovery or, if the party served with the notice is resident out of New Zealand, 28 days after that day. The amendment extends the time allowed for compliance. The amendment provides that the time allowed for compliance must be not less than 28 days or, if the person served with the notice is resident out of New Zealand, 42 days.

Rule 4 revokes rule 602 of the High Court Rules, and substitutes a new rule. The existing rule provides that if both land and chattels belonging to the same person are taken in execution under the same writ of sale, the officer executing the writ shall, unless that person otherwise desires, cause the chattels to be sold first.

The new rule provides that, notwithstanding the order of sale specified in subclause (1) of the rule and notwithstanding the desires of the person to whom the land and chattels belong, the Court may direct—

- (a) That the land be sold first; or
- (b) That the land be sold at the same time as a specified chattel or a specified class of chattels.

Rule 5 inserts into Part 10 of the High Court Rules (which relates to appeals to the High Court) a *new rule 703A*. The new rule provides that, for the purpose of ensuring that any appeal or intended appeal may be determined in a convenient and expeditious manner, and that all matters in dispute may be effectively and completely determined, a Judge may at any time, either on the application of any party or

intended party or without any such application, and on such terms as that Judge thinks fit, direct the holding of a conference of parties or intended parties or their counsel presided over by a Judge.

Rule 6 revokes subclause (4) of rule 707 of the High Court Rules and thus does away with the requirement that where an appeal from a decision of the Land Valuation Tribunal is filed in the office of a District Court, the Registrar of that District Court shall forthwith send a copy of the notice of appeal to the Registrar of the High Court at Wellington who is then required, subject to the directions given by the Chief Justice, to arrange for the hearing.

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