

Secured creditors and immovable property: a landmark ruling from the Royal Court of Jersey

Briefing Summary: A secured creditor with a hypothec (charge) over a specific immovable property can enforce against that property without having to put the debtor through a full-blown bankruptcy process. That was one of the key outcomes of the Royal Court's decision in *Representation of Prospect Holdings Limited [2025] JRC 164*.

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Content Authors: Jeremy Lightfoot, Marcus Pallot, Mike Kushner

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What happened?

The debtor owned two immovable properties (ie land/buildings) in Jersey. Prospect had a first ranking hypothec (charge) over one of the properties. The court held that Prospect could enforce its hypothec against the charged property without disrupting the other property or putting the debtor through a full-blown bankruptcy process. This would otherwise have involved a process to realise all of the debtor's immovable and movable property.

At first blush, this outcome might seem entirely unremarkable. However, for many years in Jersey, there has been debate about whether this is possible. One school of thought said that it was. The other school of thought said that the wording of certain legislation (in particular the *Loi (1832) sur les décrets*) required an order of renunciation in respect of *all* of the debtor's property, before enforcement of the charge could take place through a process called *dégrévement*.

The Royal Court's decision has settled this debate. It is now open to a secured creditor holding a specific hypothec over a particular immovable property to seek the renunciation of just that specified property. It is not necessary for the creditor to seek renunciation of all of the debtor's property. Following renunciation of the specified property, it is still necessary to go through the *dégrévement* process. This has the benefit of resolving creditor rights in respect of the renounced properties, but there are some potential downsides as we explore below.

Key Contacts



Jeremy Lightfoot
PARTNER
+44 (0)1534 888900

[EMAIL JEREMY](#)



Marcus Pallot
PARTNER, JERSEY
+44 (0)1534 822427

[EMAIL MARCUS](#)



Mike Kushner
SENIOR ASSOCIATE,
JERSEY
+44 (0)1534 822245

[EMAIL MIKE](#)

OFFSHORE LAW SPECIALISTS

BERMUDA BRITISH VIRGIN ISLANDS CAYMAN ISLANDS GUERNSEY JERSEY

CAPE TOWN HONG KONG SAR LONDON SINGAPORE

[careyolsen.com](https://www.careyolsen.com)

The basic legal framework, now clarified

A hypothec can be general, which means it extends to all of the debtor's immovable property in existence at the time of registration of the hypothec. Alternatively, a hypothec can be specific. That means the hypothec extends to a particular immovable property which must exist at the time of registration of the hypothec.

A hypothec affords the creditor with several rights. Two key rights are: (i) the right to follow the asset into the hands of a subsequent purchaser; and (ii) the right to seek to appropriate the asset in the event of default. The concepts of renunciation and *dégrévement* are concerned with the right of appropriation. They are the means and the set of remedies by which that right is vindicated.

Historically, it was only possible to seek the renunciation of all of a debtor's property. Essentially, this was because Jersey property was so heavily encumbered by different security rights, that the only way to deal with enforcement was to look at all property and all creditor claims in one fell swoop. The process of addressing creditor claims in this way was called *décret*. It was practically abolished (though theoretically still possible in very limited circumstances) in 1880 and replaced with *dégrévement*.

The *dégrévement* process has a number of intricate steps. However, the basic summary is that each of the secured creditors and unsecured creditors are asked whether they are prepared to take ownership of the property. The unsecured creditors are offered the property first, followed by secured creditors in reverse order of priority. Any creditor is permitted to take the property. However, the creditor which takes the property is obliged to repay higher ranking creditors. Any creditor who does not elect to take the property will lose its security but the underlying debt claim remains enforceable against the debtor. The creditor who takes the property does so in full discharge of its underlying debt. This means that if the debt exceeds the value of the property, the balance is effectively written off. If there is a surplus, the creditor is entitled to keep the surplus. However, in practice, the surplus is sometimes returned to the debtor for the benefit of the other creditors (although there is no obligation on a creditor to do so).

Previous controversy – at least until the court's judgment in this case – centred around the preliminary process which leads to *dégrévement*; namely, renunciation. Under the *décret* system it was clear that renunciation operated over all of a debtor's property (both immovables and movables) and not in respect of a specific property. However, it was not clear whether the same rule applied to *dégrévement*. In this judgment, the Royal Court held that it did not. That is, a creditor (holding a specific hypothec) is entitled to seek the renunciation of only the secured immovable property. The debtor does not (and should not, in our view) be required to go through renunciation and *dégrévement* of all other property, in respect of which the enforcing creditor may have no interest at all. The judgment represents, in our respectful view, a commercially sensible and pragmatic route to secured creditor enforcement.

Practical implications for industry

There are a number of potential benefits arising from the court's judgment. These include:

Targeted enforcement

Creditors may now proceed against one non-performing asset without necessarily triggering a global bankruptcy process.

Preservation of value

The outcome is potentially better for the debtor as it could result in isolating and renouncing problematic properties, minimising disruption to viable parts of the debtor's estate and other creditor arrangements.

Reduced costs

It is not necessary to proceed against assets which are irrelevant to the enforcing creditor's security and commercial objectives.

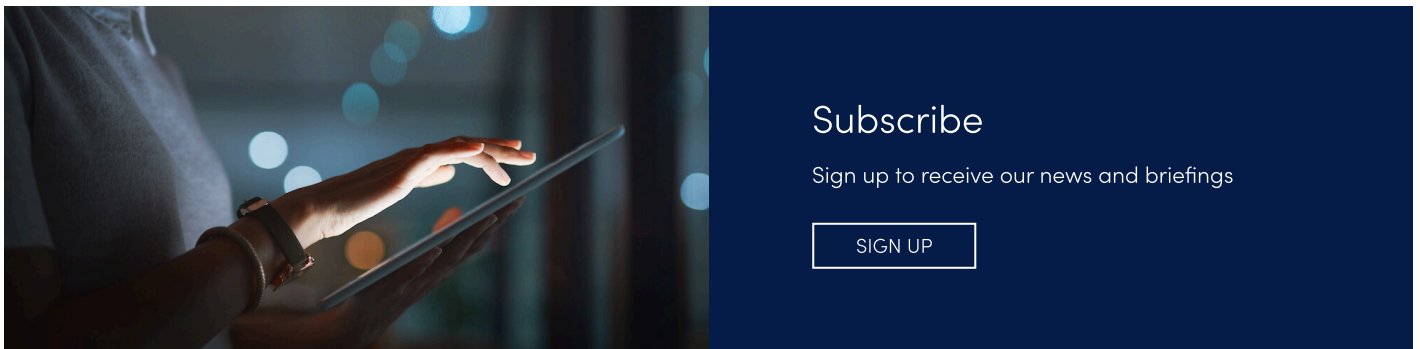
Conclusion

The judgment clarifies a complex and previously unsettled area of law. There are still a number of challenges which arise from using what are effectively ancient enforcement methods. However, not all that is old is bad. The law of security over immovable property may still have a way to go, but this is certainly a step in the right direction and one that might make Jersey more attractive to lenders. This can only be a good outcome for prospective borrowers.

Carey Olsen acted for Prospect in obtaining a successful judgment in this matter. Carey Olsen's team included Marcus Pallot, Jeremy Lightfoot, Mike Kushner, Lyndsay Houlette and Ella Harvey. The case was argued for Prospect before the Royal Court by Mike Kushner and Lyndsay Houlette.

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