

Secured creditors and immovable property: procedure and why it matters

Briefing Summary: Our latest briefing looks at a recent Court of Appeal judgment in *Representation of Prospect Capital Security Trustees Limited* [2025] JCA 265. The litigation involved a claim by Prospect to enforce its first ranking hypothec (charge) over one of the debtor's properties. The Royal Court authorised enforcement through a *dégrèvement*. The debtor's application for leave to appeal to the Court of Appeal was dismissed on all grounds. Carey Olsen acted for Prospect in obtaining a successful judgment in both the Royal Court and the Court of Appeal, showing that Jersey is a jurisdiction which promotes effective and predictable enforcement outcomes.

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Content Authors: Jeremy Lightfoot, Mike Kushner, Ella Harvey

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Creditors are entitled to have processes of law which give protection to their economic interests. Jersey has various procedural safeguards in place to protect debtors.

Those were some of the key observations from Jersey's Court of Appeal in dismissing the debtor's application for leave to appeal in *Representation of Prospect Capital Security Trustees Limited* [2025] JCA 265.

What happened?

This application concerned the Royal Court's decision in *Representation of Prospect Holdings Limited* [2025] JRC 164. We analysed the Royal Court's decision in a previous briefing note – *Secured creditors and immovable property: a landmark ruling from the Royal Court of Jersey*.

The litigation involved a claim by Prospect to enforce its first ranking hypothec (charge) over one of the debtor's properties. The Royal Court authorised enforcement through a Jersey law process called *dégrèvement* (broadly, a form of forfeiture with in-built mechanisms for managing competing creditor interests).

Key Contacts



Jeremy Lightfoot
PARTNER
+44 (0)1534 888900

[EMAIL JEREMY](#)



Nick Ghazi
PARTNER, JERSEY
+44 (0)1534 822370

[EMAIL NICK](#)



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

[EMAIL MIKE](#)



Ella Harvey
ASSOCIATE, LONDON
+44 208 057 7660

[EMAIL ELLA](#)

OFFSHORE LAW SPECIALISTS

BERMUDA BRITISH VIRGIN ISLANDS CAYMAN ISLANDS GUERNSEY JERSEY

CAPE TOWN HONG KONG SAR LONDON SINGAPORE

careyolsen.com

The debtor sought leave to appeal, essentially, on the basis that the underlying debt was flawed or there had been a procedural irregularity. Several other grounds were argued. The Court of Appeal rejected the application noting that there was no real prospect of success, no general principle to be decided for the first time and no important point of law which would benefit from further argument and a decision before the Court of Appeal.

Procedural safeguards

The Court of Appeal recognised the seriousness of enforcement against immovable property. It is necessary to balance the economic interests of the creditor and the property rights of the debtor. However, where the proper procedure has been followed, a creditor is rightly entitled to enforce.

Proper procedure includes giving adequate notice to the debtor and providing to the court adequate evidence of having done so. Equally, even where *dégrèvement* is authorised, a debtor can still seek *remise de biens* until late in the process. *Remise de biens* is a debtor-instigated bankruptcy remedy which (depending on the particular facts and circumstances) can result in better outcomes for the debtor.

Practical implications for industry

Dégrèvement continues to be a highly effective enforcement remedy for creditors with debt secured over Jersey immovable property. It is fair to say that the procedural considerations are intricate and prescriptive. These can also depend on how the hypothec (charge) is drafted in the first place. As such, it is sensible to take Jersey law advice when structuring the security and as soon as enforcement is on the horizon.

Conclusion

The judgment confirms that Jersey is a jurisdiction where both debtor and creditor rights are respected. From an enforcement perspective, this means attention to detail and ensuring that procedural requirements are followed so as to promote effective and predictable outcomes.

**Carey Olsen acted for Prospect in obtaining a successful judgment in both the Royal Court and the Court of Appeal. Carey Olsen's Court of Appeal team included Jeremy Lightfoot, Nick Ghazi, Mike Kushner and Ella Harvey. The leave to appeal application was argued and successfully opposed for Prospect by Mike Kushner.*

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