

Carey Olsen advises on ground-breaking Jersey security enforcement

Service area / [Banking and Finance, Dispute Resolution and Litigation](#)

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Carey Olsen has acted in a successful application to the Jersey Royal Court, in which the Court showed its willingness to provide certainty and protection to security trustees who are looking to enforce Jersey security interests. The application was the first of its type in the context of Jersey security enforcement.

While there is no requirement under the Security Interests (Jersey) Law 2012 (the “**2012 Law**”) for court consent as a condition of the exercise of enforcement rights, the jurisdiction of the court may still be available (as it was in this case) to assist a secured party.

In *Solutus Advisors Limited v. Aurium Real Estate London Ultra Prime Limited* [2019]... an application was made by Solutus Advisors Limited in its capacity as security trustee (the “**Security Trustee**”) for an order approving the sale of certain Jersey-situs assets in connection with the enforcement of a security interest granted under the 2012 Law. The assets were shares in a Jersey company, Bayswater Road (Holdings) Limited (“**BRHL**”), which were owned by Aurium Real Estate London Ultra Prime Limited (“**Aurium**”). Aurium had granted the security in support of a facility made to BRHL by a Luxembourg lender (the “**Lender**”) to finance the acquisition and redevelopment of certain London properties held indirectly by BRHL. BRHL defaulted on its obligations under the facility and the Lender instructed the Security Trustee to enforce the security. Following unsuccessful attempts to sell the London properties to a third party, the Lender instructed the Security Trustee to sell the shares in BRHL to an associated company of the Lender for a price equal to the amount

outstanding under the facility, such price being in excess of the highest amount expressed by any prospective third-party purchaser. The share sale was to be made under a share purchase agreement.

In exercising a power of sale in respect of the shares in BRHL, the Security Trustee owed a duty to Aurium (as grantor of the security) under Article 46(2) of the 2012 Law to: (a) take all commercially reasonable steps to obtain a fair market value for the shares; (b) act in other respects in a commercially reasonable manner in relation to the sale; and (c) enter any agreement for or in relation to the sale only on commercially reasonable terms. In light of this duty and in order to obtain certainty and protection in advance of the enforcement, the Security Trustee brought an application for the Royal Court’s approval of the sale under both Article 52 of the 2012 Law and Article 51 of the Trusts (Jersey) Law 1984 (the “**Trusts Law**”).

While the Royal Court was not persuaded that the requested order was within the scope of Article 52 of the 2012 Law, Carey Olsen on behalf of the Security Trustee was successful in obtaining the Court’s approval under Article 51 of the Trusts Law of the proposed sale of the shares in BRHL at the price and on the terms set out in the proposed share purchase agreement, being a reasonable decision on the part of the Security Trustee.

Significantly, in support of its decision to bless the proposed sale, the Royal Court found that the Security Trustee would be in compliance with all three limbs of its duty under Article 46(2) of the 2012 Law if it completed the sale as proposed. The facts relied on by the Royal Court in reaching this conclusion suggest that the duty owed by a secured party under Article 46(2) of the 2012 Law in exercising a power of sale amounts to

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a test of valuation (and realising that valuation) and that a secured party is not required to take additional steps to enhance the value of collateral. Such an inference will be welcomed by secured parties.

It will also be of comfort to security trustees that the Royal Court was willing to take jurisdiction even where both the Security Trustee and the proper law of the security trust were foreign and, further, that the scheduling of the Jersey court process did not cause material delay to the enforcement (even where the Royal Court determined that the application could not be heard without convening Aurium, as the person entitled to any surplus on enforcement, as a party). The Court's jurisdiction was founded on the Security Trustee's trust assets being Jersey-situs.

In acting for the Security Trustee and the Lender in this matter, Carey Olsen's cross-practice expertise and depth of knowledge provided a new method for security trustees to protect themselves from potential action following enforcement.

The Royal Court's decision will be welcomed by security trustees and will ensure that Jersey continues to be a leading jurisdiction in the secured lending market and commercially attractive for structuring complex financial transactions.

The Carey Olsen cross-practice team was led by partners Kate Andrews (in respect of financing aspects) and Jeremy Garrood (in respect of litigation aspects), together with Counsel Michael Evans and Consultant Nicholas Crocker. Partner Keith Dixon and Senior Associate Nichola Aldridge provided support in respect of trust aspects. English law advice was provided to the Lender by Bryan Cave Leighton Paisner and to the Security Trustee by Mayer Brown International LLP.

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