Further guidance on Jersey security enforcement law

November 2019

Introduction

The Royal Court judgment on 5 November, in Kidd and Ors v All Service Group Holdings Limited became our second judgment in six months on the issue of enforcing security interests created under the Security Interests (Jersey) Law 2012 (**SIJL**).

Why is the Kidd judgment important?

For those who advise on, and take security under the **SIJL**, it considered matters such as the duties of liquidators, conflicts of interest and valuation, and one very interesting point arising from the judgment for those also with an eye on Jersey company law.

Our key takeaways

SIJL and enforcement

1. A security giver is entitled to challenge the basis of an appropriation following receipt of a statement of account. The whole point of the statutory requirement to provide a statement of account to a security giver is to enable the security giver to satisfy itself that the security taker has discharged its statutory duties;

2. Lenders need to take as much advice as possible regarding valuation of the collateral and not rely on a single valuation, particularly where there is a possibility that the value of the collateral will be above the level of the outstanding debt. The **SIJL** makes it clear (and the court noted the point), that a security taker must take all commercially reasonable steps to determine the fair market value of the collateral at the time of the appropriation;

3. While the Jersey courts did not consider whether the security taker had complied with its duty under Article 46 of the **SIJL**, if the claim against the security taker continues, the Royal Court may provide welcome guidance to this area of law;

4. Liquidators must at all times be mindful of all the issues relating to the matter at hand and manage them carefully with proper advice; particularly, as in this case, where the liquidators have been working closely with the creditors and, in some cases, funded by them;

5. Liquidators should not be advised by the lenders' counsel;

6. In situations where there is a potential conflict; in this case where claims could be pursued against the shareholders for the clawback of a dividend and the security taker for failure to comply with its statutory duties under the **SIJL**, additional liquidators could be appointed to split the roles and manage those competing interests.

Company law

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The Royal Court may exercise its discretion and remove or appoint liquidators on the application of a shareholder under Article 175 of the Companies (Jersey) Law 1991 (the **CJL**) so long as that shareholder is an interested person. In this case, because of the potential issues of valuation and appropriation, those shareholders were interested persons. An application made by a shareholder whose shares are fully paid up under Article 186A of the CJL will not be successful. Such a shareholder is not a contributory and has no locus standi under that statutory provision to bring an application.

Collas Crill comment

While the Royal Court in the case of Re Bayswater Road (Holdings) Limited gave some helpful guidance on the enforcement of a security interest created under the **SIJL** (for our briefing on this case, please see here) this second judgment builds on, and develops the modern statutory framework of the **SIJL**. It identifies important issues to be considered by persons working on and involved with an enforcement of Jersey intangible movable security.

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About this case note

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