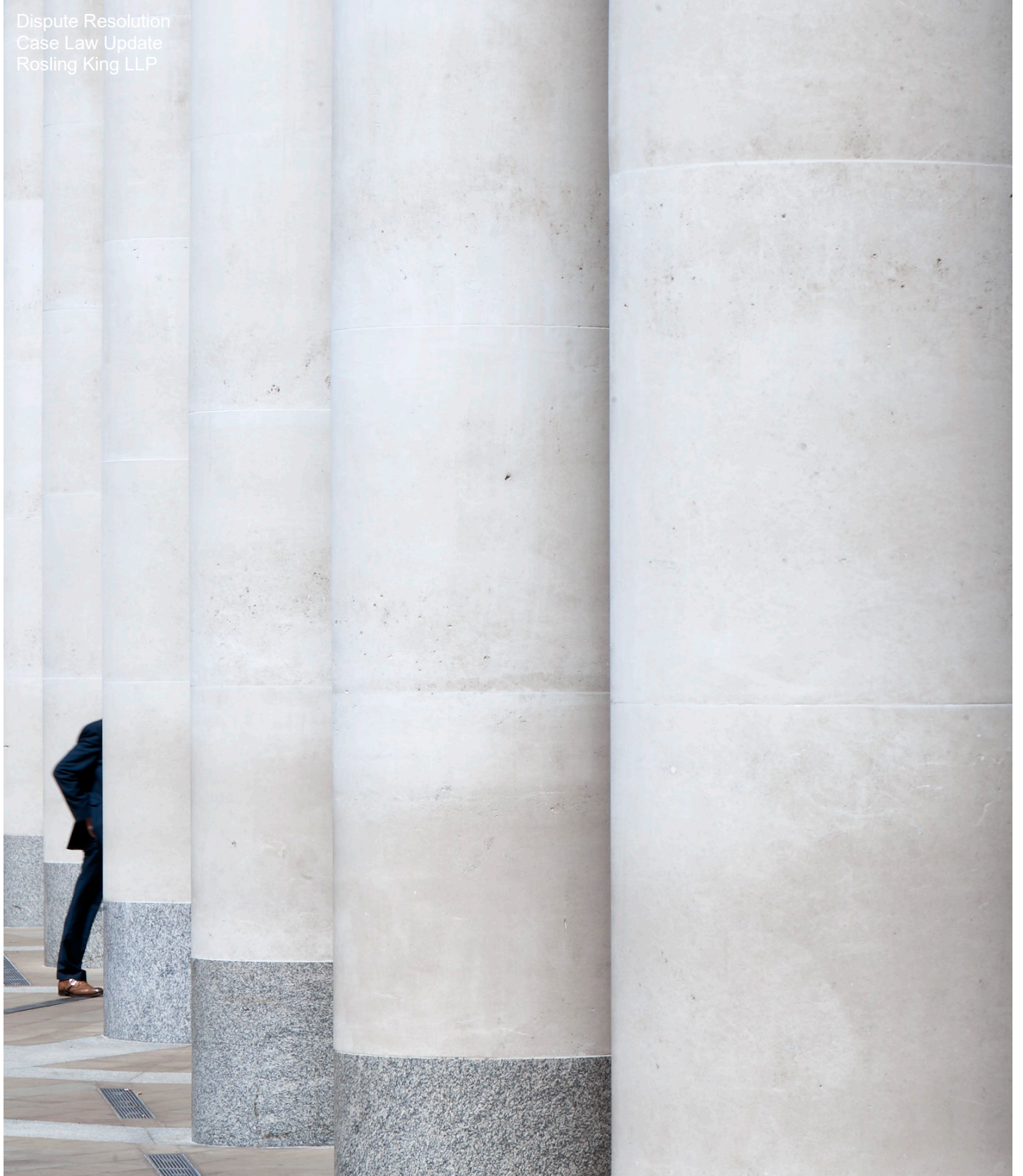


Dispute Resolution
Case Law Update
Rosling King LLP



Background

The claimant, Close Brothers Ltd (“**Close**”), a London based bank, sought to enforce its right to sell the defendant’s, AIS (Marine) 2 Limited (“**AIS**”) secured property following AIS’s default on repayment of a loan. The asset in question was a vessel and AIS mortgaged shares in the vessel to Close in order to secure a loan of €2,247,000 (the “**Loan**”). The purpose of the Loan was to assist AIS in purchasing the vessel, which cost €3,210,000.

Agreement

The agreement between the parties stated that the Loan would become repayable, in full, immediately upon any of the stated acts of default. Failure to pay any of the 59 monthly instalments of €27,500 was an act of default, and in such an event, Close was entitled to take possession of, and sell, the vessel. When AIS failed to pay instalments as they fell due, the vessel was repossessed and sold for £1,700,000. However, the sale proceeds were insufficient to discharge the outstanding amount of the Loan and there was a shortfall. Close sought to recover the shortfall from AIS.

“Best price reasonably obtainable”

AIS did not deny that it defaulted on repayment of the Loan and that Close was entitled to take possession of and sell the vessel. AIS did however deny that Close was entitled to recover the shortfall, on the basis that Close failed to sell the vessel for the best price reasonably obtainable.

The Judge considered the relevant principles to the relationship between a mortgagee and mortgagor, with respect to the sale of property which a mortgagee has taken possession of in the exercise of its rights under the mortgage. The Judge held that a mortgagee owes an equitable duty to take reasonable care to obtain the best price reasonably obtainable at the time, which is the true market value. The Judge further held that the mortgagee of a vessel owes the same duty of care in relation to the sale as any other mortgagee. Therefore the same principle will apply to the sale of other types of secured property, such as houses or cars.

In considering whether or not the vessel was in fact sold at an undervalue, the Judge considered whether the sale price was within the acceptable ambit for a vessel of that type at the relevant time, the relevant time being when expert opinion evidence was provided. The Judge considered the following factors, amongst others: nature of the market, reasonableness of other offers made and antipathy between the parties. Additional consideration was placed on whether the vessel was sold in haste, and in reaching the conclusion that Close was justified in obtaining a sale at the earliest date, the Judge looked at the quality of the asset, being a ship that costs money to moor and maintain further supporting a prompt sale.



Dispute Resolution Update: Close Brothers Ltd v AIS (Marine) 2 Ltd (in liquidation) and another

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Commentary

The case is a useful reminder for lenders as to the tests that the Courts apply when considering whether the sale of the property against which the mortgage was secured was reasonable.

For further information, please contact Georgina Squire or the Partner with whom you usually deal.