

Art in Transit Briefing Paper

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Art in Transit



Every now and again art needs to be transported from one location to another. Sometimes the art may need to be moved from one jurisdiction to another. The transportation of art from A to B is fraught with peril as the bulk of art claims arises from loss or damage to the art in transit.

From a lender's perspective, the situation gets more complicated if the art is transported from one jurisdiction to another, because of the legal concept of *lex situs* i.e. the law of the jurisdiction where the asset is located governs how title to it is transferred and also how security is taken over it. It follows that if art is being transported from, say, London to New York, a lender will need to consider a number of issues (apart from insurance, which is discussed further below). These include the following:

- » the pledge or chattel mortgage governed by English law over the art will cease to be effective once the art leaves the jurisdiction. Once it arrives in New York it can be secured by a NY law governed security agreement and protected by a UCC1 filing.
- » what happens when the art is in transit after it leaves the jurisdiction of England and Wales before it arrives in the jurisdiction of NY?
 - is the lender content to release the art from its security during this period and reduce the LTV of the art in its security portfolio?
 - if the lender wants security over the art in transit, it needs to ascertain how the art is being transported between the two jurisdictions as this could affect the security available to it. The possibilities in this case are ship or air.
 - in the case of transportation by ship, the carrier can be asked to issue a bill of lading (which constitutes a document of title) and it is possible for this document to be deposited with the lender in England and a valid pledge taken over it.

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- in the case of transportation by air, the carrier can be asked to issue an air waybill (which serves as a receipt of goods by the carrier airline as well as a contract of carriage between the shipper and the airline, but it is not a document of title). This means that a lender cannot take a valid pledge over an air waybill.
- » it follows that if the art is transported by air, it is very difficult for a lender to obtain a valid security interest over the art in transit. One possibility might be to take a pledge over the art whilst it is in international airspace between London and NY, but this would not work if, say, the aircraft flies over a jurisdiction's airspace where the lender does not have security or is flown to, say, Germany and then trucked for part of its journey.

The other issue is insurance. As mentioned above, most claims in relation to art arise from damage occurring during transit. Taking the art off a wall, crating it up, loading it onto a truck, plane or ship, uncrating it and putting it back on a wall in a different location can be perilous. It is essential that the art is professionally packed (and indeed this is often an insurance requirement) and, if necessary, encased in a custom-made case fitted with its own micro-climate. One issue when art is trucked, is the number of stops the truck will make en route. The more stops, the more chances of damage or theft if the truck is left unattended. Also, ideally do not send out an express shipment on a Friday as it is highly likely that the art will sit in a warehouse over the weekend.

From a lender's standpoint, it is essential to check that that the owner has wall-to-wall or nail-to-nail insurance over the art during transport from a reputable insurer for the full reinstatement value of the art. The policy (if governed by English law) can be assigned to the lender by way of security and the lender should be named as first loss payee.

In conclusion, art in transit poses many risks to owner and lender alike. Taking security over art when it moves jurisdiction can be tricky - having good professionals involved in packing and transit is key and insurance cover (assigned to the lender as security) is also essential.

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