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High Court Ruled That Lender Suffered No Loss Despite Negligent Valuation of Security

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On 27 September 2023, the British High Court ruled that the claimant relying on the defendant's report suffered no actionable loss, despite the defendant's admission of negligence.

The case of *Hope Capital Ltd v Alexander Reece Thomson LLP* revolved around a lender's claim against its appointed valuer for breach of contract and negligence concerning a loan security valuation. The Court dismissed the lender's claim, ruling in favour of the valuer where it determined that the lender's loss is the consequence of the various inherent risks of the commercial transaction, not because of the risk that the valuation was overvalued, being the only risk that the valuer can fairly be held responsible for.

Factual Background

In February 2018 a report was prepared by a property firm (the "Valuer") who valued a long leasehold over a Grade II-listed property (the "Property") at £4 million (the "Valuation"). Subsequently, a bridging loan for £2.2 million was granted by a bridging loan company (the "Lender") with the Property as security. The borrower under that loan later defaulted and the receivers took possession of the Property on 12th November 2018.

A number of issues arose, the most significant being the service of a section 146 notice by the landlord National Trust on 18th November 2018 that required remedial work to the Property in respect of breaches caused by 'irresponsible renovations'. The Property was eventually sold in October 2020 for £1.4 million.

The Lender brought a claim against the Valuer alleging that the valuation was negligent and that given the crucial nature of the Valuation to the Lender's decision to provide the loan, no transaction would have taken place had the valuation reflected the true value of the Property. The claim for substantial losses included loss in capital, and loss of profits that would have been realised from the same loss of capital had it been used for other loans.

The Valuer accepted that it had been negligent and in breach of its duty, having overstated the value in its Valuation such that the true value of the Property fell outside of the margin within which a reasonable competent value should have fallen. However, it denied causation and loss, as the true value of the Property nonetheless exceeded that of the loan at the date of the default, and as the sale price was impacted by intervening matters.

The High Court found that the Lender had suffered no actionable loss, and as a result the claim was dismissed.

Legal Analysis

The principal legal issue raised in this case was what damages are recoverable where (a) had it not been for the negligence of a professional adviser his client would not have transacted, but (b) part or all of the loss suffered in taking such course of action arose from risks that such adviser had no duty to protect his client against.

The Court highlighted the importance of determining the losses that are caused by a negligent act by first determining on a ‘but-for’ basis the extent of the loss that flowed from the alleged breach of duty. This meant comparing the position where the lender would not have entered into the transaction but for the breach of duty, versus the position had it not entered into it with his actual position. In determining this, it could then be considered whether the loss was within the scope of the Valuer’s duty.

The Court then explained that the scope of duty of care of a professional adviser should be an objective determination of the ‘purpose’ of the duty with reference to the reason why the advice is being given (that is, in this instance, the Valuer was being paid to provide it). Moreover, in a case of negligent advice, the Court further explained that one would have to look at what risk the duty was supposed to guard against and whether the loss suffered represented the “fruition of that risk”.

This led to a crucial distinction being made between ‘information’ and ‘advice’: that is, did the Valuer assume responsibility for the risk of the whole transaction, or just a part of it. The Court explained that a valuer will by its nature rarely supply more than a specific part of the material on which its client’s decision is based and is therefore no more than a provider of information, and that the purpose of a valuation would only form part of the scope for which a lender would decide whether to lend. Equally, a valuer would not ordinarily be privy to the other considerations that a lender may use to decide whether to enter into their transaction, such as how much a borrower needs to borrow, the strength of their covenant, and any other commercial and personal considerations that may induce a lender to lend.

Ultimately, the Court highlighted that the purpose of the Valuation was to provide the Lender with an opinion on the value of the Property that was being offered as security for the loan. Whilst the Court acknowledged that the Lender is perfectly entitled to rely on the Valuation and that the value was an important consideration for a mortgage lender in making a loan, it is by no means the only factor; the Lender would have had to consider other factors, such as the borrower’s credit risk, for which the Valuer has no responsibility for.

Moreover, the Valuer would have been assessing worth as at the date of the Valuation, not forecasting a projected worth, and as such there is always the risk that the value may go down, a risk that is for the Lender to take. The fact that the Lender did make the loan implies that the Lender was indeed willing to bear such risk. The Court also scrutinised the causes of the loss in the Property's value, concluding that factors such as the section 146 notice by the National Trust and the impact of the Covid-19 pandemic contributed significantly, all of which would not be safeguarded against by the Valuer’s duty of care.

The Court therefore concluded that, to the extent there was any loss suffered by the Lender is the consequence of the inherent risks of the commercial transaction, and not because of the risk that the Valuation was overvalued, being the only risk that the valuer can fairly be held responsible for.

Closing Thoughts

The Court's decision in *Hope Capital Ltd v Alexander Reece Thomson LLP* reinforces the principle that a third-party professional adviser’s duty is bounded by the purpose of its information. This decision emphasises the importance of considering what the specific risks are that the duty is meant to safeguard against, and that regardless of whether information provided by a professional adviser is critical to a party’s decision to enter into a transaction, it does not in and of itself mean that the adviser is responsible for such decision, nor is it liable for all the financial consequences of that decision.