

Surveyors Valuation

Craneheath Securities Ltd v York Montague Ltd

COURT OF APPEAL
BALCOMBE, OTTON, ALDOUS, LJJ

16 June 1995

Hotel — Loan secured by charge on property — RICS guidance notes — Whether valuation negligent — Valuer not shown to be negligent — Action dismissed in High Court — Burden of establishing negligence had not been discharged — Court of Appeal dismissing appeal against that decision

"Kingsdown" was a manor house in Kingsdown, near Deal, Kent. Its ground floor was a restaurant and both the house and business were owned by a company (Traylodge). Craneheath Securities Ltd were a secondary bank and York Montague Ltd (YM) were chartered surveyors. In 1989 Craneheath loaned £0.55m to Traylodge, secured by a second charge on Kingsdown. There was already a first charge in favour of a bank (KD), which had loaned £3.15m. On May 22 1990 Craneheath loaned a further £0.1m, also subject to the second charge. On September 19 1990 joint receivers and administrators of Traylodge were appointed and on April 15 1991 a compulsory winding-up order was made. Kingsdown was eventually sold at auction on May 6 1992 for £0.475m.

Craneheath lost all their money and KD most of theirs. Craneheath said that its two loans were made in reliance on a valuation of Kingsdown made by YM in the sum of £5.25m. It claimed that the valuation was negligent and sought damages totalling £1m. YM said that the valuation was not negligent (or at least not shown to be) and, that even if it were, Craneheath was either wholly or partially the author of its own misfortune. The High Court dismissed Craneheath's claim against YM for damages for negligence: see [1994] 1 EGLR 159. Craneheath appealed.

Held The appeal was dismissed.

1. In the absence of special conditions and whether the duty was contractual or tortious, a valuer's duty to a lender was to take reasonable care to give a reliable and informed opinion on the open market value of the land at the date of valuation. In each case the duty was to exercise a reasonable standard of professional care in the circumstances, no more and no less: see *Banque Bruxelles SA v Eagle Star Insurance* [1995] 12 EG 144.

2. Craneheath had obtained a valuation report to the effect that the property should have been valued at no more than £2m at the relevant time. However, that report was presented in so conditional a manner that it was not evidence on which a court could properly be asked to make a finding that another valuation was wrong. There was no material before the judge which could have enabled him to make a finding that Craneheath had discharged the initial burden of proving that the valuation of £5.25m was wrong. Valuation was not a science but an art and the instinctive feel for the market of an experienced valuer was not something to be ignored.

3. Since Craneheath had not established that the figure of £5.25m was wrong, its action failed. It was not enough for Craneheath to show that there had been errors at some stages of the valuation, unless it could be shown that the final valuation was wrong: see *Mount Banking Corporation Ltd v Brian Cooper & Co* [1992] 2 EGLR 142, at pp144-5, 149.

Timothy Lloyd QC and Jonathan Simpkins (instructed by Allison Humphreys) appeared for Craneheath; Timothy Stow QC and Richard Lynagh (instructed by Cameron Markby Hewitt) appeared for York Montague.

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[\[Back to Search Results\]](#)[\[Full Text\]](#)**CRANEHEATH SECURITIES LTD v YORK MONTAGUE LTD (1995)****CA (Balcombe LJ, Otton LJ, Aldous LJ) 16/6/95****REAL PROPERTY - NEGLIGENCE****SURVEYOR'S ALLEGED NEGLIGENCE BY OVERVALUATION****Subsequent price of business realised at auction no guide to whether the business was overvalued three years earlier.**

Plaintiff's appeal against dismissal of an action for negligence in the preparation of a survey report and valuation of the Don Medi Restaurant made on 29/9/89 on an open market going concern basis including goodwill trade fixtures, fittings and contents used in the business. Relying on the report the plaintiff made a short term advance of £550,000 to the owner which became irrecoverable on sale by a prior encumbrancer three years later.

HELD: The defendant's valuation of £5.25 million was not shown by the evidence to be an overvaluation notwithstanding that the business realised only £475,000 when sold by auction in May 1992. The conditions were so different in 1992 from the buoyant days of 1989 that the ultimate sale price was of no assistance in determining the value of the business in 1989.

Appeal dismissed.

LTL 21/6/95 : (1996) 1 EGLR 130

Judgment Official

Document No. AC0002644

IN THE SUPREME COURT OF JUDICATURE
IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM ORDER OF MR JUSTICE JACOB

No FC3 95/6061/E

Royal Courts of Justice
Strand
London WC2

Friday, 16th June, 1995

B e f o r e:

LORD JUSTICE BALCOMBE

LORD JUSTICE OTTON

LORD JUSTICE ALDOUS

CRANEHEATH SECURITIES LIMITED

APPELLANT

- v -

YORK MONTAGUE LIMITED

RESPONDENT

(Computer Aided Transcript of the Palantype Notes of
John Larking Verbatim Reporters, Chancery House, Chancery Lane
London WC2 Tel: 071 404 7464
Official Shorthand Writers to the Court)

MR T LLOYD QC and MR J SIMPKISS (Instructed by Allison & Humphreys, London) appeared on behalf of the Appellant.

MR T STOW QC and MR R LYNAGE (Instructed by Cameron Markby Hewitt, London) appeared on behalf of the Respondent.

J U D G M E N T
(As Approved)

LORD JUSTICE BALCOMBE: This an appeal by the plaintiff, Craneheath Securities Ltd., from an Order made by Jacob, J. on 3 December 1993 whereby he dismissed Craneheath's claim against the defendant, York Montague Ltd. ("YM"), for damages for negligence in connection with a survey report and valuation of the Don Medi Restaurant, The Manor House, Kingsdown, near Deal, Kent ("Kingsdown").

The owner of Kingsdown at the relevant date was a company, Traylodge Ltd., which had acquired the property in October 1987 and opened it as a restaurant. The key figures in Traylodge were Mr. Medi Siadatan ("Don Medi") and a Mr. White, a chartered accountant based in Yorkshire. There was a first mortgage on Kingsdown in favour of Kreditforeningen Danmark ("KD") in the sum of £2.4m.

On 26 September 1989 YM prepared a report and valuation on Kingsdown for KD. The valuation was on an open market basis, on a going concern basis, including the benefit of goodwill, trade fixtures, fitting and contents used in connection with the business. The report, which was prepared in accordance with the Guidance Notes relating to the Valuation of Property Assets published by the Royal Institution of Chartered Surveyors, valued Kingsdown at £5.25m. The individual in YM who made the report and valuation was Mr. Anthony Crabtree, a chartered surveyor of very great experience, particularly in valuations in the hotel, leisure and restaurant industry.

In November 1989 Traylodge applied to Craneheath, which was a

secondary bank, for short term finance of £550,000. Craneheath was prepared to provide this facility on condition (inter alia) that YM's report of 26 September was addressed to Craneheath. So YM sent a copy of its report to Craneheath: the date on the report remained the same, although the re-addressed report was not sent to Craneheath until the very end of November or the beginning of December 1989. On 22 December 1989 Craneheath lent to Traylodge the sum of £550,000 secured by a second charge on Kingsdown. The judge found, and there has been no cross-appeal on this point, that this loan would not have been made had YM's valuation of Kingsdown been less than £5m.

Unfortunately the restaurant business at Kingsdown failed to live up to its early promise. This was, in part at least, due to the fact that Mr. White fell out with Mr. Siadatan. General economic circumstances also changed and when Kingsdown was eventually sold at auction in May 1992, in the course of the compulsory liquidation of Traylodge, it only fetched £475,000 and Craneheath lost the whole of its advance. However, as the judge said, conditions in 1992 were so different from the buoyant days of 1989 that the ultimate sale price is of no assistance in determining the value of Kingsdown in 1989.

There was no dispute before us as to the legal principles applicable to Craneheath's claim: they are as most recently stated by Sir Thomas Bingham, M.R. in giving the judgment of the court in *Banque Bruxelles S.A. v. Eagle Star* [1995] 2 W.L.R. 607 at p. 618 (where V is the valuer and L is the lender):-

"In the absence of special conditions, and whether the duty is contractual or tortious, V's duty to L is the same: to take reasonable care to give a reliable and informed opinion on the open market value of the land in question at the date of valuation. In the ordinary way V does not warrant that the land would fetch on the open market the value he puts on it, any more than a medical practitioner warrants that he will cure a patient of illness. In each case the duty is to exercise a reasonable standard of professional care in the circumstances, no more and no less."

Further, it was common ground that Mr. Crabtree's methodology was correct and in accordance with the R.I.C.S. Guidance Notes. What Mr. Crabtree did was to assess the current annual rate of turnover of the business carried on at Kingsdown, which he took as £1.1m from a figure given to him by the directors of Traylodge, and which he checked by making an assessment of the number of meals served in the year and the average price for each meal. He saw the potential for an increase in turnover in three respects: (i) opening the restaurant for lunch on Saturday and Sunday; (ii) increasing prices; and (iii) increasing reputation. This led him to a potential annual turnover of £1.55m. He took a net profit ratio of 35%, giving an annual profit of £542,500. To capitalise this profit he took a figure of 8 years' purchase, giving £4,340,000. To this he added separate figures for the values of the upper parts of the restaurant premises and six cottages which also formed part of Kingsdown. The overall total of £5,325,000 was rounded down to £5.25m.

Craneheath's attack on the valuation was not on Mr. Crabtree's

methodology, but on its implementation. It submitted:

a) That his assessments of the annual number of meals served (91,000) and the average price per meal (£12) were both too high.

b) That his uplift of 40% on current turnover to reach a turnover of £1.55m was too high.

c) That a figure of 35% for profitability was too high.

d) That in respect of each of these separate heads, as well as cumulatively, his over-assessments were so out of line as to amount to negligence.

Mr. Timothy Stow, Q.C., for YM, submitted that, as Craneheath had never established that the overall valuation of £5.25m was wrong, there was no need to consider in detail any of Craneheath's complaints: it fell at the first hurdle. Accordingly I turn first to this issue.

The judge made no direct finding that the valuation of £5.25m was wrong. Mr. Timothy Lloyd, Q.C., for Craneheath, submitted that by the nature of things it was difficult for Craneheath (upon whom the burden fell) to prove this. The property was unusual and difficult to value; it was not on the market at the relevant time so there were no offers; there were no comparables. In these circumstances one would have expected Craneheath to call one or more valuers to give evidence of their expert opinion of the open market value of Kingsdown at the relevant date. The

only relevant witness called by Craneheath was Mr. C.D. Lickley, F.R.I.C.S. whose report of 28 June 1993 was put in evidence. His instructions were to address the following question (amongst others):-

"(iv) What would I have valued the property at in September 1989.....
given the turnover figures provided by the Directors of
Traylodge Limited?"

His only answer to this question is in paragraph 12.11 of his report:

"12.11 Even based on the Directors' projections of £1.2 million turnover and maximum £350,000 net profit, it is likely that I would have valued Don Medi's at no more than £2 million to include all trade furnishings, fixtures and fittings and goodwill. This would have been based upon a Years' Purchase of 5 times £350,000 (£1.75 million) and in addition £200,000 for the Gate House Cottage. If draft accounts had been available, my value would, I am sure, have been lower at say £1.25 million, (a Years' Purchase of 5 applied to an adjusted net profit of £200,000 plus Gate House Cottage). To reflect potential to increase the trade I would possibly have increased the Years' Purchase to 6 but even this would have only resulted in an uplift of approximately 10% on each of the above values. In either case I would be unlikely to have valued at more than twice turnover whichever turnover is adopted. On this basis even assuming a turnover of £1.77 million (net of VAT) and net profit of £639,500 I would be unlikely to have valued at more than £3/3.5 million."

In my judgment a report expressed in so conditional a manner is not evidence on which a court can properly be asked to make a finding that another valuation is wrong. But even if it were, Mr. Lickley's evidence on this point was clearly shaken in his cross-examination. I do not think any useful purpose would be served by my setting out in the course of this judgment the passages from the transcript of Mr. Lickley's evidence which lead me to this conclusion; it is sufficient for me to say that having read the relevant passages from both his report and the transcript of his oral evidence, I am satisfied that there was no material before the judge which could have enabled him to make a finding that Craneheath had discharged the initial burden of proving that the valuation of £5.25m was wrong. I reject Mr. Lloyd's submission, that if we were satisfied that there were a sufficient number of errors in the way in which Mr. Crabtree has carried out his valuation we should in the circumstances of this case infer that his final result was wrong. Valuation is not a science, it is an art, and the instinctive 'feel' for the market of an experienced valuer is not something which can be ignored.

Since Craneheath did not establish that the figure of £5.25m was wrong, then I agree with Mr. Stow that Craneheath's action must necessarily fail. It would not be enough for Craneheath to show that there have been errors at some stages of the valuation, unless it can also show that the final valuation was wrong. If authority be needed for so self-evident a proposition, it can be found in *Mount Banking Corporation Ltd. v. Brian Cooper & Co.* [1992] 2 E.G.L.R. 142 at pp. 144-5, 149.

In the circumstances it is not strictly necessary for me to consider

the substance of Craneheath's attack on the valuation. I do so briefly, not only out of deference to the arguments of Mr. Lloyd, but because if Craneheath had not fallen at the first hurdle it would in my judgment have fallen at the second and each subsequent hurdle.

As I have already said Mr. Crabtree started his calculations with a figure of £1.1m for the current annual rate of turnover: his report actually states:

"It is our understanding that the turnover during 1989 is likely to be slightly in excess of £1 million."

The figure of £1.1m was supplied to him by the directors, one of whom was a chartered accountant. He was not shown any accounts, as he expressly made clear in his report - indeed it does not appear that any audited accounts were then in existence - but the figure of £1.1m was consistent with the draft management accounts which had been supplied by Traylodge to Craneheath. But in any event - and this is the second hurdle at which Craneheath would have fallen - it adduced no evidence to establish that the figure of £1.1m was in fact incorrect. No satisfactory explanation was given to us why there was no such evidence. The restaurant continued to trade throughout the whole of the calendar year 1989, so that it should have been possible to establish whether the directors' estimate of £1.1m for the year's turnover was correct. If it was, then any errors by Mr. Crabtree in the steps he took to check the directors' estimate would again be quite irrelevant.

Similar arguments apply to Craneheath's criticisms of Mr.

Crabtree's assessments of the number of meals served and the average price per meal. If these figures were in fact wrong, that ought to have been demonstrable from Traylodge's records. No such evidence was adduced.

As to the attacks on Mr. Crabtree's figures for uplift and profitability, it is sufficient to say that the evidence was (and the judge expressly so found in relation to profitability) that Mr. Crabtree's calculations were not outside accepted professional standards. He may have been in general somewhat optimistic in these respects but optimism is not by itself negligence.

Thus although I have approached this case in a manner not entirely the same as that in which the judge did, I am satisfied that he was right in his conclusion that it had not been shown that Mr. Crabtree, and through him YM, was negligent. Like the judge, I do not find it necessary to consider the arguments as to contributory negligence.

I would dismiss this appeal.

LORD JUSTICE OTTON: I agree. I wish only to add a short passage by way of emphasis. In his report Mr Crabtree gave the valuation of Kingsdown on the open market basis as a going concern, by reference to the profit which could be made from the commercial use of the premises. He used two separate methods of valuation. In valuing the restaurant, he first used a profits method, based on his assessment of the restaurant's

turnover and profitability. He then used a conventional valuation of the premises for residential use.

In his first calculation he assessed the current annual rate of turnover as £1.1 million, verifying the figure given to him by the directors. He concluded that his assessment was justified on the basis of 91,000 meals at an average of £12.00 each net. The Judge found as a fact that he had carried out an assessment which was independent of the information that he had been given by the management in reaching his conclusions. He also took account of an earlier report of Mr Ames a partner in the respondents' firm. There is no criticism of the methodology adopted for this purpose. There was little or no evidence to show that the figure of 91,000 was erroneous. The only other figure advanced was 83,200 in Mr Ames report which the appellants did not seek to impugn at the trial and which Leading Counsel informed this court was not subject to challenge. On the appellants schedule the valuation based on 83,200 at £12.00 average net spend produced £998,400. This was only £93,600 less than Mr Crabtree's unrounded figure of £1,092,000, a difference of less than 1%.

The Judge rejected the plaintiffs' contention that Mr Crabtree had fallen into error in failing to deduct VAT from the £12.00 average spend per customer. He accepted Mr Crabtree's evidence that Mr Crabtree had deducted VAT and that the £12.00 was a net figure. There was evidence which, depending upon how the Judge evaluated it, entitled the Judge to make such a finding of fact. I am not persuaded that there is any reason to disturb this finding, it is unassailable.

The calculation of £1.1 million was in line with the information given to him, namely, £1.1 million turnover with an approximate net profit of £300,000. Before the advance was made the plaintiffs saw the management accounts (which Mr Crabtree had not seen). In evidence Mr Stone, the plaintiffs' managing director with overall responsibility for the day to day running of the banking operations and with 25 years banking experience admitted that the management accounts "were not inconsistent with" Mr Crabtree's report. In cross examination he was asked:

"Q. If they had been inconsistent that would have again sounded an alarm bell? A. Yes, not just with me. -- The senior employees of the bank would have been given the task of checking and testing, so that I overall would be looking to see if there were any disparities within the figure work after it had been analysed by one of my clerks or managers.

-- They also used a form and a testing document in which there would have been tests for all types of profit returns, whether the cash flow was on target, whether you reduced the sensitivity analysis by reducing the turnover by a certain amount. -- One thing about managements accounts is that they are a projection of what is happening now and what is going to happen in the future, and we all know what can happen with projections, so the testing of those is probably more rigorous than it would be of the balance sheet, on an historical basis.

Q. To cut a long story short, whatever you saw was consistent with a turnover of over £1 million and profits of over £300,000? -- A. Yes."

In the light of this the plaintiffs faced a formidable task in discharging their burden of proving that the figure of £1.1 million as an assessment of current turnover was erroneous. Without such a finding there could be no finding of negligence.

It was common ground that Mr Crabtree was correct in attempting to assess future profitability. The Judge was not persuaded that Mr Crabtree was wrong in arriving at a potential turnover figure of £1.55 million based on a 7 day week, an increase of prices by 10% and an increase in reputation of 5%. The Judge did not reject the net profit ratio of 35% which gave an annual profit of £542,500. He also accepted a factor of 8 as the year's purchase giving £4,340,000. On the basis that the base figure of £1.1 million was not proved to be wrong and that the final figure of £4.34 million was an extrapolation based on the £1.1 million it is difficult to see how the Judge could have found that the total was erroneous. The valuation of the premises has not been disputed before this court. The overall total of £5.325 million was rounded down by Mr Crabtree to £5.25 million.

The end result is that the valuation figure of £5.25 although out of line with subsequent valuations was never shown to be wrong. It must follow that there was no basis upon which the defendants could have been found to be negligent.

For these reasons I too would dismiss the appeal.

LORD JUSTICE ALDOUS: I agree with both judgments.

Order: Appeal dismissed with costs.



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Our Ref 5.RAR

12 May 2003

Your Ref

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WITH COMPLIMENTS OF

BOB ROBERTSON

Enclosure(s):

Dear Chris

The case you enquired about is 1995, reported in 1996 in the Estates Gazette. We don't have a copy of that version but I attach a summary and transcript which hopefully will give the necessary information.

With kind regards,

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