[1981] 3 All ER 592

Yianni and another v Edwin Evans & Sons (a firm)

QUEEN'S BENCH DIVISION

PARK J

7, 8, 28 JULY 1981

Negligence - Information or advice - Knowledge third party might rely on information - Surveyor and valuer - Valuation report to building society - Surveyor's report stating that property adequate security for amount of loan sought by purchaser of property - Building society offering to lend that amount to purchaser in reliance on report - Surveyor negligent in failing to discover defects in foundations of property - Property inadequate security for loan - Purchaser accepting building society's offer and purchasing property - Whether surveyor liable to purchaser for negligent statement in report to building society - Whether relationship between surveyor and purchaser sufficiently proximate for duty of care to arise.

In October 1974 the owners of a house discovered serious defects in it stemming from subsidence and distortion in the foundations. Without remedying the defects the owners sold the house to P in about April 1975. P carried out extensive repairs and redecoration to the house but did not remedy the defects in the foundations. Later in 1975 P offered to sell the house to the plaintiffs, who were of modest means and were looking for an inexpensive house. The plaintiffs decided to buy the house at P's asking price of £15,000 if they could obtain a loan of £12,000 from a building society. Accordingly they applied to a building society for a loan of £12,000 and paid to the society a survey fee for the valuation of the property which, under s 25[a] of the Building Societies Act 1962, the society was required to carry out. The building society instructed the defendants, a well-established firm of valuers and surveyors who regularly carried out valuations for the society, to inspect the house and value it. The society's instructions to the defendants named the plaintiffs as the purchasers of the house, the purchase price of the house and the loan required by the plaintiffs. The defendants' representative inspected the house and following his inspection the defendants made a report to the building society in which they stated that the house was adequate security for a loan of £12,000. The building society accepted the report and notified the plaintiffs that it was willing to lend them £12,000 and also sent them a copy of the society's booklet on mortgages, which in a paragraph headed 'Valuation' stated that the society did not accept responsibility for the condition of the property offered as security, that it did not warrant that the purchase price was reasonable, that the valuer's report was confidential to the society and for its exclusive use, and that if a borrower required a survey of the property for his own

[a] Section 25, so far as material, is set out at p 596 *e*, post

information and protection he should instruct an independent surveyor. The society also sent the plaintiffs a notice under s 30[b] of the 1962 Act stating that the making of an advance would not imply any warranty by the building society that the purchase price was reasonable. It was common knowledge among building societies and known to the defendants that 90% of applicants for mortgages to purchase lower-priced houses relied on the building society's valuation of the property and did not instruct an independent surveyor, despite the guidance given to applicants in building society literature and the service of s 30 notices. The plaintiffs accepted the building society's offer without having the house independently surveyed. In January 1976 they completed the purchase of the house and in October discovered cracks in the foundations. The cost of repairing the foundations was estimated at £18,000. The plaintiffs brought an action against the defendants for damages for negligence, alleging that the defendants' statement in their report to the building society that the house was adequate security for a loan a £12,000 meant that the house was worth at least that sum, that that was a negligent statement, that the defendants ought reasonably to have contemplated that the building society would pass on the contents of that statement to the plaintiffs, and that the plaintiffs would rely on it and be induced to purchase the house for £15,000 and to mortgage it. The plaintiffs claimed that having done so they had in consequence suffered damage. The defendants admitted that they were negligent in their inspection of the house and in failing to notice the defects in the foundations and were consequently negligent in stating in their report that the house was adequate security for a loan of £12,000 when in fact it was worth little more than its site value, but they contended, however, that they owed no duty of care to the plaintiffs, that any duty of care was owed only to the building society, and that, in failing to have an independent survey, in making no inquiries about what had been done to the house before they bought it and in failing to have regard to the building society's literature, the plaintiffs had been contributorily negligent.

[b] Section 30 is set out at p 596 *f*, post

Held - The defendants were liable in negligence to the plaintiffs for the following reasons--

(1) The defendants owed the plaintiffs a duty of care because the relationship between them was sufficiently proximate to establish that it was within the defendants' reasonable contemplation that carelessness on their part might be likely to cause the plaintiffs damage, because (a) the defendants knew that the building society would rely on their valuation report in assessing the adequacy of the house as security for a loan and the amount of the loan, (b) they therefore knew that because of their report the building society would offer to lend the plaintiffs £12,000 and by virtue of that offer would pass on to the plaintiffs the defendants' valuation of the house, and (c) having regard to the common practice, known to the defendants, of borrowers who were purchasing lower priced houses relying on a building society's valuation of the property and not having an independent survey, the defendants also knew that the plaintiffs, in deciding to purchase the house for £15,000 and to mortgage it would rely on the defendants' valuation which was communicated to them in the building society's offer to lend £12,000 (see p 600 *b*, p 604 *c* to p 605 *g* and p 606 *h*, post); dicta of Denning LJ in *Candler v Crane, Christmas & Co* [1951] 1 All ER at 433-436, of Lord Morris, of Lord Hodson, of Lord Devlin and of Lord Pearce in *Hedley Byrne & Co Ltd v Heller & Partners Ltd* [1963] 2 All ER at 594, 597, 611, 617-618 and of Lord Wilberforce in *Anns v London Borough of Merton* [1977] 2 All ER at 498 applied.

(2) There were no policy considerations which required that the defendants' duty to the plaintiffs should be negatived,

since (a) to hold that the defendants were liable to the plaintiffs would not result in a valuer to a building society having unlimited liability to third parties, since his liability would be limited to liability to the purchaser named in the building society's instructions to value a property, and (b) it would not be objectionable if the consequence of holding that the defendants were liable to the plaintiffs was that applicants for building society mortgages would always rely on the

building society's valuation and would not have the property they wished to purchase independently surveyed, since there was nothing objectionable in having a property surveyed once only, namely by the building society's surveyor (see p 605 *g h* and p 606 *a* to *c* and *h*, post).

(3) The plaintiffs had not been guilty of contributory negligence in failing to have the house independently surveyed or in failing in general to take steps to discover the condition of the house because it was reasonable for the plaintiffs to rely on the defendants' valuation (see p 606 *f* to *h*, post).

Notes

For the duty to take care generally, see 34 *Halsbury's Laws* (4th Edn) para 5 and for negligence in relation to statements, see ibid para 53.

For cases on the duty to take care, see 36(1) *Digest* (Reissue) 17-32, *34-103*.

Cases referred to in judgment

Anns v London Borough of Merton [1977] 2 All ER 492, [1978] AC 728, [1977] 2 WLR 1024, 141 JP 526, 75 LGR 555, HL, *Digest* (Cont Vol E) 449, *99b*.

Candler v Crane, Christmas & Co [1951] 1 All ER 426, [1951] 2 KB 164, CA, 36(1) *Digest* (Reissue) 22, *75*.

Donoghue v Stevenson [1932] AC 562, [1932] All ER Rep 1, 101 LJPC 119, 147 LT 281, 37 Com Cas 350, 1932 SC(HL) 31, 1932 SLT 317, HL, 36(1) *Digest* (Reissue) 144, *562*.

Hedley Byrne & Co Ltd v Heller & Partners Ltd [1963] 2 All ER 575, [1964] AC 465, [1963] 3 WLR 101, [1963] 1 Lloyd's Rep 485, HL, 36(1) *Digest* (Reissue) 24, *84*.

Home Office v Dorset Yacht Co Ltd [1970] 2 All ER 294, [1970] AC 1004, [1970] 2 WLR 1140, [1970] 1 Lloyd's Rep 453, HL, 36(1) *Digest* (Reissue) 27, *93*.

Le Lievre v Gould [1893] 1 QB 491, 62 LJQB 353, 68 LT 626, 57 JP 484, 4 R 274, CA, 36(1) *Digest* (Reissue) 9, *27*.

Nocton v Lord Ashburton [1914] AC 932, [1914-15] All ER Rep 45, 83 LJ Ch 784, 111 LT 641, HL, 43 *Digest* (Repl) 115, *1038*.

Robinson v National Bank of Scotland 1916 SC (HL) 154, 25 *Digest* (Reissue) 89, *459*.

Ross v Caunters [1979] 3 All ER 580, [1980] Ch 297, [1979] 3 WLR 605.

Action

By a writ issued on 19 November 1979 the plaintiffs, George **Yianni** and Anna **Yianni,** claimed against the defendants, Edwin Evans & Sons, a firm of surveyors and valuers, damages for negligence in regard to a representation in their report to the Halifax Building Society on the value of a house at 1 Seymour Road, Hornsey, London N8, in regard to the purchase of which the plaintiffs were seeking a loan from the building society. The facts are set out in the judgment.

Robert Johnson QC and Malcolm Stitcher for the plaintiffs.

Richard Fernyhough for the defendants.

Cur adv vult

28 July 1981. The following judgment was delivered.

PARK J

read the following judgment. In this case the question to be decided is, in broad terms, whether surveyors who in a valuation report on a dwelling house for a building society negligently misrepresent its value are liable to purchasers who, in reliance on the statement as to its value, purchase the house and in consequence suffer damage.

1 Seymour Road, Hornsey, London N8 is a two-storey end of terrace house. It was built about the turn of the century and was of standard construction for the period. On the ground floor there is now an entrance hall, living room and kitchen, and on the first floor two double and two single bedrooms, bath and lavatory. It is a suitable house for a person of modest means with a small family.

Between 1960 and 1975 it was owned by the Mountmorres Property Co Ltd. The company used to let the house unfurnished. In August 1974 the tenants advised the company that cracks had appeared. The company called in a surveyor. As a result of his report the company obtained two quotations from local builders as to the cost of remedial works. One estimate was £6,600 and the other £8,550. Neither estimate

included the cost of underpinning works which would have had to be carried out by a specialist firm. The company thereupon made a claim on their insurers. The insurers instructed a firm of chartered loss adjusters and surveyors. Thomas Howell, Selfe & Co, to investigate the claim and report on it. Their report is by a Mr Kilbey and is dated 17 October 1974. Of the nature and extent of damage Mr Kilbey reported--

'There is scarcely a wall which is free from signs of settlement and distortion. On the front elevation there are signs of historic settlement of the party wall, the front door having obviously been adapted from time to time to enable it to close. The bay window

> shows signs of a separate subsidence, tending to crack away from the main wall and incline outwards. The arch over the entrance is fractured and has at some time previously been reinforced with a steel semi-circular arch bar. Clear signs of brickwork fractures extend from above this arch to the window above, which is distorted. The flank wall shows numerous bulges and distortions, as indeed do the rear walls. Internally, most of the floors appear to slope in one direction or another. The corniced ceilings show numerous cracks, some having previously been made good, and it would appear that the flank wall has moved outwards. Few doors or windows function owing to distortion.'

As to the cause of that state of affairs Mr Kilbey reported--

> 'For the most part, all damage seen was of long standing and obviously various attempts have been made in the past to make good cracks and defects. There is little doubt that the situation was exacerbated by a succession of dry years, causing the clay subsoil to dry out under foundations which were probably shallow and movement to take place. The fruit trees in the adjoining property have probably contributed to this.'

The report recommended that as the inception date of the policy was July 1974 and as the movement which caused the damage had occurred long before that date the insurers should not accept liability. The report also said that to carry out repairs of the kind described in the builders' quotations would be uneconomic.

At some time thereafter, and certainly before April 1975 the company sold the property to Mr Andreas Protopapas for £7,250. Mr Protopapas caused extensive repairs and redecoration to be carried out, no doubt at considerable cost. It is not necessary to refer to them in detail. It is sufficient to say that they included the following: new plasterboard ceilings to bedrooms, landing and front part of the house. Doors and frames were renewed. An opening was cut in the partition to unite two sitting rooms into one through lounge. That opening was spanned by an RSJ extending from the party wall to the flank wall, and at the end of the RSJ was a large restraining plate fixed to the outside. The flank wall chimney breast on both floors and the stacks had been taken away. The windows throughout the house had been modernised with fixed glass and louvre vents. The whole of the external brickwork had been stuccoed; the exterior had been repainted and the interior redecorated throughout. Central heating had been installed.

Mr Protopapas is Mrs **Yianni's** brother. Mr and Mrs **Yianni** (the plaintiffs), Mr Protopapas and a solicitor, Mr Nicolaou, all come from the same village near Famagusta in Cyprus. Mr **Yianni** came to this country in 1961. He married some 15 years ago. He has two children who in 1975 were aged nine and eight. He was then and still is employed as a salesman in a furniture company owned by one of his wife's relatives. In 1975 he and his wife and children were living in a flat in East London, of which Mr Protopapas was the landlord. In or about November 1975 Mr Protopapas told Mr **Yianni** that he had a house for sale, and that the keys were kept with Mr Nicolaou. Mr **Yianni** and his wife, who does not speak English, paid two visits to 1 Seymour Road. They walked around it. No doubt, because it had been recently redecorated, it looked in good condition. It appeared to them to be a suitable home for themselves and their young family. It also happened to be about five minutes' walk from Mr **Yianni's** place of work, and was not far from the shops. For these reasons the plaintiffs decided that they would like to buy the house. Mr Protopapas's price was £15,000. Mr **Yianni** didn't ask him

what he had paid for the house, nor about the extent or cost of the repairs and redecoration that had been carried out. Mr Protopapas volunteered no information on the subjects. The plaintiffs probably trusted him and assumed that the price he asked was fair. Mr **Yianni** was then earning £90 per week. He had savings of just over £3,000, so he needed £12,000 in order to be able to buy the house.

On or about 29 November 1975 the plaintiffs consulted Mr Nicolaou. He was also Mr Protopapas's solicitor and an

agent for the Halifax Building Society. The plaintiffs had never previously bought a house or engaged in a mortgage transaction. Mr Nicolaou at some stage told the plaintiffs that he thought £15,000 was a reasonable price. He used the expression that it was a 'good buy'. He evidently told them that they could apply to the Halifax for an advance of £12,000 to enable them to buy the house. Mr **Yianni** said in evidence that he and his wife decided that if the Halifax agreed to provide £12,000 they would buy the house. If the Halifax did not agree to do so they would, as he put it, 'let the house go', as they had no money apart from the £3,000. Accordingly, they completed, apparently in Mr Nicolaou's office, a form of application for a loan to the Halifax, dated 1 December 1975.

By s 25 of the Building Societies Act 1962 the directors of a building society have imposed on them the duty to make arrangements for the valuation of properties offered as security for advances. Those arrangements have to be such as may reasonably be expected to ensure (inter alia) that there will be made available to every person in the society who has to assess the adequacy of any security an appropriate report as to the value of any freehold estate comprised in the security, and as to any matter likely to affect the value thereof. Section 25(2) also says this:

> '... the reference to an appropriate report, in relation to any freehold or leasehold estate, is a reference to a written report prepared and signed by a competent and prudent person who--*(a)* is experienced in the matters relevant to the determination of the value of the estate ... '

I need read no more words in that subsection.

By s 30 of the 1962 Act it is provided:

> 'Where a building society makes to a member an advance for the purpose of its being used in defraying the purchase price of freehold or leasehold estate, the society shall be deemed to warrant to the member that the purchase price is reasonable, unless, before any contract requiring a member to repay the advance is entered into, the society gives to the member a notice in writing in the prescribed form stating that the making of the advance implied no such warranty.'

On the application form the second paragraph forewarns the applicant that the making of an advance does not imply any warranty as to the reasonableness of the purchase price. Mr **Yianni** read that paragraph. He was also informed by Mr Nicolaou that he would, to use Mr **Yianni's** words, have to pay money for the house to be looked at. The fee was £33·4330. Mr **Yianni** borrowed that sum from Mr Protopapas. He handed it over to Mr Nicolaou and subsequently repaid his brother-in-law that money.

On 1 December 1975 Mr Nicolaou spoke to the building society's branch manager at Finsbury Pavement and by arrangement sent him the form completed by the plaintiffs, together with a letter to which I need not refer.

On 8 December 1975 the branch manager sent to the defendants, a firm of surveyors and valuers, a printed document headed Instructions to valuer'. There is a reference in the document to s 25 of the 1962 Act. It can safely be assumed therefore that the defendants were aware of the provisions of s 25 and therefore of the purpose for which the report was required by the building society. This document also informed them of the purchase price of 1 Seymour Road, namely £15,000, and the advance required, £12,000. It would also appear from the document that the defendants had carried out valuations for the building society prior to 8 December 1975 because they were advised to include the charge for their valuation of 1 Seymour Road in their next

quarterly account to the building society's Finsbury Pavement office. Mr **Yianni,** remembering that the form that he had signed suggested that applicants who desired a survey for their own information and protection should consult a

surveyor on their own account, made inquiries about the cost of employing a surveyor to make a report to him on 1 Seymour Road. He discovered that the fee would be between £60 and £100, the difference in amount being attributable probably to the difference in the standing of the surveyor consulted and the kind of report which was sought. In any event, that was more than Mr **Yianni** could afford, so he decided not to have a report of any kind on the house.

Was Mr **Yianni's** decision not to obtain a surveyor's report for his own information in any respect unusual? On this question as important witness was Mr Hunter, the chief surveyor to the Abbey National Building Society and a person with very high qualifications in this field, who gave evidence in his private capacity. He told me how members of the public usually act when seeking to purchase house property with the aid of an advance from a building society. He spoke from experience gained from the fact that about 200,000 mortgage applications passed through his society each year. The Abbey National and the Halifax are not the only building societies in business. According to Wurtzburg and Mills on Building Society Law (14th Edn, 1976), in 1975 there were about 447 of them. Out of that number it is probable that few handle mortgage applications on the same scale as the Abbey National and the Halifax but, whether that is right or not, it is clear that in every year many thousands of people make mortgage applications to building societies.

Since 1975, or thereabouts, the subject of the frequency with which independent surveys are sought by intending mortgagors has been one of increasing interest both to the building societies and to the Royal Institute of Chartered Surveyors. Mr Hunter has been taking spot checks over this period, and he has found that out of the total applications received by his society the proportion of mortgagors who have their own independent survey is less than 10%. The Royal Institute of Chartered Surveyors also conducted a spot check and found the proportion to be between 10% and 15%. From his experience Mr Hunter was able to advance a number of reasons for the failure to take the building society's advice to employ an independent surveyor. In the first place, intending mortgagors trust the building societies. This trust is no doubt in part engendered by successful advertising. There was put in evidence an attractive brochure issued by the Halifax Building Society. On the front there is a picture in colour of a young man and a young woman with two children in a garden, a modern house in the background and the words prominently printed 'The Halifax guide to a home of your own'. Inside there are ten pages containing the questions which an intending mortgagor would probably ask and the building society's answers. At the end of the book under the heading 'Personal service at over 380 branches and 1,300 agencies' is set the address of each branch. Another reason, said Mr Hunter, is that each intending mortgagor knows that he has paid a fee for someone on behalf of the building society to look at the house. Many of them are not sufficiently informed to be able to distinguish between a surveyor's report on valuation and a surveyor's report on condition because the usual intending mortgagor is, as Mr Hunter said, a lay person, not a professional. 'They have to have their hands held a little bit', he said. In addition the intending mortgagor feels that the building society, whom he trusts, must employ for the valuation and survey competent qualified surveyors; and, if the building society acts on its surveyor's report, then there can be no good reason why he should not also himself act on it. The consequence is that if, after inspection by the building society's surveyor, an offer to make an advance is made, the applicant assumes that the building society has satisfied itself that the house is valuable enough to provide suitable security for a loan and decides to proceed by accepting the society's offer. So, if Mr **Yianni** had had an independent survey, he would have been exceptional in the experience of the building societies and of those employed to carry out surveys and valuations for them.

I come back now to the narrative. In compliance with the instructions from the

building society, dated 8 December 1975, the defendants' representative, on 12 December 1975, surveyed 1 Seymour Road. The defendants' report and valuation is dated 15 December 1975. At the foot of it there is a further reference to s 25 of the 1962 Act. Their valuation of the house was £15,000. Their confidential observations for the information of the building society's directors to enable those directors to assess the adequacy of 1 Seymour Road as security for an

advance was that it was suitable for maximum lending. That meant that it was suitable security for an advance of 80% of the value of the house, which was £12,000. The directors did not take long to arrive at their decision to accept the defendants' recommendation. By a notice dated 19 December 1975, to which I will refer in a moment, the plaintiffs were informed that the building society was willing to make an advance of £12,000.

But the defendants' report and valuation was the result of a grossly incompetent and negligent survey. None of the serious faults in the foundations discovered by Mr Kilbey in October 1974 and never remedied were disclosed in it. Those faults gravely affected the value of the house. The report was referred to with scorn by Mr Hunter. 'I speak as a surveyor', he said, 'I don't look with any pride at a document such as this'. In truth, notwithstanding the extensive repairs and redecoration carried out by Mr Protopapas, the house at this time, was worth little more than its site value.

By their solicitors' letter dated 16 October 1980 the defendants admitted that in inspecting the house they were negligent in the following respects: that they failed to notice that the property had been the subject of subsidence, failed to take proper steps to ascertain whether the property had been the subject of subsidence and reported to the Halifax Building Society that the property was suitable for maximum lending.

Months after the survey, and after the true condition and value of the house had been discovered, the building society, on 1 March 1978 wrote to the defendants. The second paragraph of the letter says:

> 'Had the subsidence in the property or in the adjacent property been made known to the Society, the situation would have been investigated before an offer of advance was made and the application would subsequently have been declined.'

In that paragraph the building society makes it abundantly plain that, but for the defendants' negligent report, no offer to advance money on the security of the house would ever have been made to the plaintiffs.

I return again to the narrative. A few days after receiving the defendants' report and valuation the building society's Finsbury Pavement branch sent out three forms, all dated 19 December 1975. Two were sent to the plaintiffs and one to Mr Nicolaou. One of the forms sent to the plaintiffs says, among other things:

> 'In response to your application, the Society is willing to make an advance as detailed below provided that the title to the property and to any additional security is acceptable to the Society and you execute a mortgage deed in the form prescribed by the Society and lodge it, together with any necessary documents of title, with the Society until the mortgage is discharged. A copy of the Society's explanatory booklet "MORTGAGES: INFORMATION FOR MEMBERS", is enclosed. You will be required to pay any costs of the Society's solicitors arising from investigation of title and the preparation of the mortgage deed and any other documents, whether or not the advance is made. By receiving the advance you will become a member of the Society and subject to its rules.'

Below those words is a panel which states the advance to the £12,000.

The building society's explanatory booklet was enclosed. There is a copy in evidence. Mr **Yianni** did not read it. If he had done so he would have read on page 2 the following paragraph under the heading 'Valuation':

> 'The Society does not accept responsibility for the construction or condition of the property offered as security, nor does it warrant that the purchase price is reasonable. The valuer's report is confidential to the Society and is exclusively for

> the use of the directors and officers in determining whether a loan should be made and if so, for what amount. The Society may

> bring to your notice any defects which the valuer mentions but it should not be assumed that no other defects exist. If you require a survey for your own information and protection, you should instruct a surveyor independently. You are recommended to do this.'

Mr Hunter, in reply to questions from counsel for the defendants about building society literature, said that the Abbey National's literature, like the Halifax's, included words to the effect that the society recommended the applicant to obtain independent advice. Mr Hunter was then asked if he would expect applicants to read the literature. He replied that he would not expect all of them to read the literature like this handbook; or if they did, to understand it and follow the advice given, because, he said, the majority of people who buy in the lower income groups just do not have the understanding. Later on he said of applicants generally:

> 'They are not all fools. Lots of them understand the situation and read all the literature. But they have paid the survey fee, so they rely on the building society and on the building societies' surveyors. They therefore have confidence in the survey report.'

The form received by Mr Nicolaou, among other things, says:

> 'The applicant has been notified that the Society is willing to make an advance as detailed below. Will you please act for the the Society in investigating the title and completing the mortgage, submitting your report on title together with the enclosed surveyor's report when you requisition the cheque.'

The enclosed surveyor's report was presumably the defendants' report. If it was there is no vidence that Mr Nicolaou ever showed it to the plaintiffs, and indeed Mr **Yianni** says in terms that he never saw it.

The other form received by the plaintiffs was for use if the plaintiffs decided to accept the offer contained in the form dated 19 December 1975. It says:

> 'To the Chief General Manager, Halifax Building Society. We wish to proceed with the advance as detailed in your letter under the above reference number. We acknowledge receipt of a statutory notice under the Building Societies Act, 1962, Section 30, and a copy of the explanatory booklet "Mortgages: Information for Members".'

The statutory notice is not with the documents in the bundle but it is not disputed that such a notice was received by the plaintiffs. It was a notice in the prescribed form, that is form 3 in Part I of Sch I to the Building Societies Rules 1962, SI 1962 No 1936. The notice informed the plaintiffs that in the event of the building society making an advance to assist them in the purchase of 1 Seymour Road the making of the advance would not imply any warranty by the building society that the purchase price of the property was reasonable. Mr **Yianni** was in fact already aware of this and had been aware of it since he completed the application form.

The plaintiffs evidently consulted Mr Nicolaou on or about 29 December 1975. They then completed the form whereby they informed the building society that they wished to accept the society's offer.

Counsel for the defendants submitted that when the plaintiffs decided to accept the building society's offer they placed no reliance on any statement in this document, save for the statement that the building society was willing to advance £12,000 on the security of 1 Seymour Road. Accordingly, says counsel, all the plaintiffs did was to accept, as he put it, the offer of the mechanics or means whereby they could acquire the house they had already made up their minds to buy, subject to the building society agreeing to make available to them the necessary funds. It could not have been easy for Mr **Yianni** over five years after making the decision to accept the building society's offer to describe precisely what

matters influenced has mind and his wife's mind at the time

that decision was made. Undoubtedly they liked the house and, for the reasons he mentioned, wanted to buy it. Were it not for those matters they would not have applied to the building society for a loan in the first place. Having made that application it is clear that, unless in response to it the building society had stated that it was willing to advance the whole £12,000, the plaintiffs would not have proceeded further. But in addition there is also evidence by Mr **Yianni** that at the time the offer to advance £12,000 was made he made some remark to his wife to the effect that the house must be good. I am satisfied that the statement that the building society was willing to advance £12,000 served in the minds of the plaintiffs to confirm the fact that the house was worth at least £12,000 and that undoubtedly was a factor which they took into account when their decision to buy was made.

The correspondence shows that, after the acceptance of the offer, Mr Nicolaou proceeded to make the necessary searches. He also requested the building society to provide full insurance cover against all risks in the sum of £15,000. Eventually completion took place on 6 January 1976 and the plaintiffs and their family went into occupation of the house.

In or about October 1976 Mr **Yianni's** attention was drawn to cracks in the house by his next door neighbour, at no 3, who complained that there were cracks in no 3 caused by the fact that no 1 was tilting away from it. Mr **Yianni** therefore instructed a chartered surveyor, Mr Hurrell, to inspect the house. Mr Hurrell found extensive damage caused by fractures. These were due to the leaning out of the main structural walls owing to subsidence of the foundations which had been built on clay. He considered that the end wall would have to be rebuilt and all the remaining walls underpinned at an approximate cost of £8,000. On Mr **Yianni's** behalf Mr Hurrell made a claim on the insurers who, quite by chance, appointed Thomas Howell, Selfe & Co to investigate the matter. Their representative, Mr Kilbey, at once recollected that he had investigated the claim for subsidence damage to the house in October 1974. On inspecting it again in January 1977 Mr Kilbey noticed that, while a certain amount of redecoration had been done, none of the extensive underpinning work he had envisaged in his report of 17 October 1974 had been carried out. In those circumstances the insurers declined to accept responsibility for the damage. Mr Hurrell, however, on Mr **Yianni's** behalf persisted in his efforts to get the insurers to change their minds, but without success. Over this period the building society had informed the defendants of the allegations being made against them, and eventually the building society wrote the letter dated 1 March 1978 to which I earlier referred. By that time the cost of repairing 1 Seymour Road was estimated to be £18,000. That concludes my summary of the facts.

On that evidence the case for the plaintiffs is that the defendants' statement to the building society that 1 Seymour Road was suitable as security for a loan of £12,000 meant that the property was worth at least £12,000, that that was a negligent statement, that the defendants ought reasonably to have contemplated that the statement would be passed on by the building society to the plaintiffs, that the defendants knew or ought to have known that the plaintiffs would rely on it and would be induced by it to buy the property and mortgage it to the building society, and that the plaintiffs in fact did so and in consequence suffered damage.

The defendants called no evidence. They contend that, although they were negligent, they owed no duty of care to the plaintiffs and, in consequence, are not liable for the plaintiffs' grievous loss. The building society has taken no steps to sue the defendants. Counsel for the defendants suggests that the building society was not able to do so because it had suffered no damage as a result of the defendants' negligence. In these circumstances I respectfully adopt and repeat a sentence from the judgment of Sir Robert Megarry V-C in *Ross v Caunters*
[1979] 3 All ER 580 at 583, [1980] 1 Ch 297 at 303: 'If this is right, the result is striking. The only person who has a valid claim has suffered no loss, and the only person who has suffered a loss has no valid claim.'

Thus, the first question to be decided is whether, on the facts, the defendants owed a duty of care to the plaintiffs. On this question, there can be no doubt that the dissenting

[1981] 3 All ER 592 at 601

judgment of Denning LJ in *Candler v Crane, Christmas & Co* [1951] 1 All ER 426, [1951] 2 KB 164 is very much in point. The headnote ([1951] 2 KB 164) summarises the facts of that case in this way:

> 'The plaintiff was considering the possibility of his investing 2,000*l*. in a limited liability company, but, before deciding to do so, desired to see the accounts of the company. The managing director of the company accordingly instructed the defendants, the accountants of the company, who were getting out the accounts, to press on and complete them, informing a clerk of the accountants, who had been requested by them to prepare the accounts, that they were required to be shown to the plaintiff who to his knowledge was a potential investor in the company. The clerk accordingly prepared the accounts and at the request of the managing director showed them to and discussed them with the plaintiff who took a copy of them and submitted them to his own accountant for advice. As a result the plaintiff invested his money in the company. The accounts were carelessly prepared, contained numerous false statements and gave a wholly misleading picture of the state of the company, which was wound up within a year, the plaintiff losing the whole of his investment.'

In his judgment Denning LJ said ([1951] 1 All ER 426 at 433-436 [1951] 2 KB 164 at 179-184):

> 'Let me now be constructive and suggest the circumstances in which I say that a duty to use care in making a statement does exist apart from a contract in that behalf. First, what persons are under such duty? My answer is those persons, such as accountants, surveyors, valuers and analysts, whose profession and occupation it is to examine books, accounts, and other things, and to make reports on which other people--other than their clients--rely in the ordinary course of business. Their duty is not merely a duty to use care in their reports. They have also a duty to use care in their work which results in their reports ... Secondly, to whom do these professional people owe this duty? I will take accountants, but the same reasoning applies to the others. They owe the duty, of course, to their employer or client, and also, I think to any third person to whom they themselves show the accounts, or to whom they know their employer is going to show the accounts so as to induce him to invest money or take some other action on them. I do not think, however, the duty can be extended still further so as to include strangers of whom they have heard nothing and to whom their employer without their knowledge may choose to show their accounts. Once the accountants have handed their accounts to their employer, they are not, as a rule, responsible for what he does with them without their knowledge or consent. [After referring to *Le Lievre v Gould* [1893] 1 QB 491 he continued:] Excluding such cases as those, however, there are some cases--of which the present is one--where the accountants know all the time, even before they present their accounts, that their employer requires the accounts to show to a third person so as to induce him to act on them, and then they themselves, or their employers, present the accounts to him for the purpose. In such cases I am of opinion that the accountants owe a duty of care to the third person ... Thirdly, to what transactions does the duty of care extend? It extends, I think, only to those transactions for which the accountants knew their accounts were required ... [He then drew certain distinctions:] Thus, a doctor, who negligently certifies a man to be a lunatic when he is not, is liable to him, although there is no contract in the matter, because the doctor knows that his certificate is required for the very purpose of deciding whether the man should be detained or not, but an insurance company's doctor owes no duty to the insured person, because he makes his examination only for the purposes of the insurance company ... So, also, a Lloyd's surveyor who, in surveying for classification purposes, negligently passes a mast as sound when it is not, is not liable to the owner for damage caused by it breaking, because the

[1981] 3 All ER 592 at 602

> surveyor makes his survey only for the purpose of classifying the ship for the Yacht Register and not otherwise ... My conclusion is that a duty to use care in statement is recognised by English law, and that its recognition does not create any dangerous precedent when it is remembered that it is limited in respect of the persons by whom and to whom it is owed and the transactions to which it applies.'

Denning LJ's judgment was referred to in all the speeches in *Hedley Byrne & Co Ltd v Heller & Partners Ltd* [1963] 2 All ER 575, [1964] AC 465 to which I now turn. The headnote ([1964] AC 465) reads:

> 'The appellants were advertising agents, who had placed substantial forward advertising orders for a company on terms by which they, the appellants, were personally liable for the cost of the orders. They asked their bankers to inquire into the company's

> financial stability and their bankers made inquiries of the respondents, who were the company's bankers. The respondents gave favourable references but stipulated that these were "without responsibility". In reliance on these references the appellants placed orders which resulted in a loss of £17,000. They brought an action against the respondents for damages for negligence:--*Held*, that a negligent, though honest, misrepresentation, spoken or written, may give rise to an action for damages for financial loss caused thereby, apart from any contract or fiduciary relationship, since the law will imply a duty of care when a party seeking information from a party possessed of a special skill trusts him to exercise due care, and that party knew or ought to have known that reliance was being placed on his skill and judgment ... However, since here there was an express disclaimer of responsibility, no such duty was in any event, implied ... *Candler* v. *Crane, Christmas & Co*. overruled.'

Lord Reid, after saying that *Candler v Crane, Christmas & Co* was wrongly decided, said ([1963] 2 All ER 575 at 583, [1964] AC 465 at 487):

> 'The majority of the Court of Appeal held that they were bound by *Le Lievre* v. *Gould* ([1893] 1 QB 491) and that *Donoghue* v. *Stevenson* ([1932] AC 562, [1932] All ER Rep 1) had no application. In so holding I think that they were right. The Court of Appeal have bound themselves to follow all rationes decidendi of previous Court of Appeal decisions, and, in face of that rule, it would have been very difficult to say that the ratio in *Le Lievre* v. *Gould* did not cover *Candler*'s case. LORD DENNING, who dissented, distinguished *Le Lievre* v. *Gould* on its facts ... '

Lord Morris referred briefly to *Candler*'s case, observing only that there the Court of Appeal had followed *Le Lievre v Gould*. But he said ([1963] 2 All ER 575 at 590, 594, [1964] AC 465 at 496-497, 502-503):

> 'It seems to me, therefore, that if A claims that he has suffered injury or loss as a result of acting upon some mis-statement made by B who is not in any contractual or fiduciary relationship with him the inquiry that is first raised is whether B owed any duty to A: if he did the further inquiry is raised as to the nature of the duty. There may be circumstances under which the only duty owed by B to A is the duty of being honest: there may be circumstances under which B owes to A the duty not only of being honest but also a duty of taking reasonable care. The issue in the present case is whether the bank owed any duty to Hedleys and if so what the duty was. Leaving aside cases where there is some contractual or fiduciary relationship there may be many situations in which one person voluntarily or gratuitously undertakes to do something for another person and becomes under a duty to exercise reasonable care. I have given illustrations. Apart from cases where there is some direct dealing, there may be cases where one person issues a document which should be the result of an exercise of the skill and judgment required by him in his calling and where he knows and intends that its accuracy will be relied on by another ... My Lords, I consider that it follows and that it should now be regarded as settled that if someone possessed of a special skill undertakes, quite irrespective of

> contract, to apply that skill for the assistance of another person who relies on such skill, a duty of care will arise. The fact that the service is to be given by means of, or by the instrumentality of, words can make no difference. Furthermore if, in a sphere in which a person is so placed that others could reasonably rely on his judgment or his skill or on his ability to make careful inquiry, a person takes it on himself to give information or advice to, or allows his information or advice to be passed on to, another person who, as he knows or should know, will place reliance on it, then a duty of care will arise.'

Lord Hodson ([1963] 2 All ER 575 at 597, [1964] AC 465 at 509) said:

> 'So far I have done no more than summarise the argument addressed to the Court of Appeal in *Candler*'s case to which effect was given in the dissenting judgment of DENNING, L.J., with which I respectfully agree in so far as it dealt with the facts of that case. I am, therefore, of opinion that his judgment is to be preferred to that of the majority, although the opinion of the majority is undoubtedly supported by the ratio decidendi of *Le Lievre* v. *Gould*, which they cannot be criticised for following.'

He agreed with passages from Lord Morris's speech which I have already read.

Lord Devlin, after declaring that he did not think it possible to formulate with exactitude all the conditions under which

the law would in a specific case imply voluntary undertakings to accept responsibility for an act, then said ([1963] 2 All ER 575 at 611, [1974] AC 465 at 530):

> 'But in so far as your lordships describe the circumstances in which an implication will ordinarily be drawn, I am prepared to adopt any one of your lordships' statements as showing the general rule; and I pay the same respect to the statement by DENNING, L.J., in his dissenting judgment in *Candler* v. *Crane, Christmas & Co* about the circumstances in which he says a duty to use care in making a statement exists.'

Lord Pearce quoted from the report of Denning LJ's judgment the passages I have already read and said ([1963] 2 All ER 575 at 617-618, [1964] AC 465 at 538-539):

> 'I agree with those words. In my opinion, they are consonant with the earlier cases and with the observations of LORD HALDANE [in *Nocton v Lord Ashburton* [1914] AC 932 at 947, [1914-15] All ER Rep 45 at 49 and in *Robinson v National Bank of Scotland* 1916 SC (HL) 154 at 157] ... Was there such a special relationship in the present case as to impose on the respondents a duty of care to the appellants as the undisclosed principals for whom the National Provincial Bank, Ltd. was making the inquiry? The answer to that question depends on the circumstances of the transaction. If, for instance, they disclosed a casual social approach to the inquiry no such special relationship or duty of care would be assumed ... To import such a duty the representation must normally, I think, concern a business or professional transaction whose nature makes clear the gravity of the inquiry and the importance and influence attached to the answer ... A most important circumstance is the form of the inquiry and of the answer.'

Finally I was referred to *Anns v London Borough of Merton* [1977] 2 All ER 492 at 498-499, [1978] AC 728 at 751, a case which was not in any way concerned with negligent statements. However, Lord Wilberforce said this:

> 'Through the trilogy of cases in this House, *Donoghue v Stevenson* [1932] AC 562, [1932] All ER Rep 1, *Hedley Byrne & Co Ltd v Heller & Partners Ltd* [1963] 2 All ER 575, [1964] AC 465 and *Home Office v Dorset Yacht Co Ltd* [1970] 2 All ER 294, [1970] AC 1004, the position has now been reached that in order to establish that a duty of care arises in a particular situation, it is not necessary to bring the facts of that situation within those of previous situations in which a duty of care has been held to exist. Rather the question has to be approached in two stages. First one has to ask whether, as between the alleged wrongdoer and the person who has suffered damage

> there is a sufficient relationship of proximity or neighbourhood such that, in the reasonable contemplation of the former, carelessness on his part may be likely to cause damage to the latter, in which case a prima facie duty of care arises. Secondly, if the first question is answered affirmatively, it is necessary to consider whether there are any considerations which ought to negative, or to reduce or limit the scope of the duty or the class of person to whom it is owed or the damages to which a breach of it may give rise ... Examples of this are *Hedley Byrne & Co Ltd v Heller & Partners Ltd* where the class of potential plaintiffs was reduced to those shown to have relied on the correctness of statements made ... '

I do not think that cases cited in argument which were decided before *Hedley Byrne* are of assistance in the present case.

Accordingly, guided by the passages in the judgment of Denning LJ in *Candler*'s case and by the speeches in the House of Lords cases, I conclude that, in this case, the duty of care would arise if, on the evidence, I am satisfied that the defendants knew that their valuation of 1 Seymour Road, in so far as it stated that the property provided adequate security for an advance of £12,000, would be passed on to the plaintiffs who, notwithstanding the building society's literature and the service of the notice under s 30 of the 1962 Act, in the defendants' reasonable contemplation would place reliance on its correctness in making their decision to buy the house and mortgage it to the building society. What therefore does the evidence establish?

These defendants are surveyors and valuers. It is their profession and occupation to survey and make valuations of houses and other property. They make reports about the condition of property they have surveyed. Their duty is not merely to use care in their reports, they also have a duty to use care in their work which results in their reports. On the instructions of the building society, the defendants sent a representative to 1 Seymour Road to make a survey and valuation of that property. He knew that the object of the survey was to enable the defendants, his employers, to submit a report to the building society for the use of the directors in discharging their duty under s 25 of the Act. The report, therefore, had to be directed to the value of the property and to any matter likely to affect its value. The defendants knew, therefore, that the director or other officer in the building society who considered their report would use it for the purpose of assessing the adequacy 1 Seymour Road as security for an advance. There is no evidence that the building society had access to any other reports or information for this purpose or that the defendants believed or assumed that the building society would have any information beyond that contained in their report. Accordingly, the defendants knew that the director or other officer of the building society who dealt with the plaintiffs' application would rely on the correctness of this report in making on behalf of the Society the offer of a loan on the security of 1 Seymour Road. The defendants therefore knew that the plaintiffs would receive from the building society and offer to lend £12,000, which sum, as the defendants also knew, the plaintiffs desired to borrow. It was argued that, as the information contained in the defendants' report was confidential to the directors, the defendants could not have foreseen that the contents of their report would be passed on to the plaintiffs. But the contents of the report never were passed on. This case is not about the contents of the entire report, it is about that part of the report which said that 1 Seymour Road was suitable as security for a loan of £12,000. The defendants knew that that part would have to be passed on to the plaintiffs, since the reason for the plaintiffs' application was to obtain a loan of £12,000. Accordingly, the building society's offer of £12,000, when passed on to the plaintiffs, confirmed to them that 1 Seymour Road was sufficiently valuable to cause the building society to advance on its security 80% of the purchase price. Since that was also the building society's view the plaintiffs' belief was not unreasonable.

It was argued that there was no reasonable likelihood that the plaintiffs would rely on the fact that the defendants had made a valuation report to the building society or, alternatively, that the defendants could not reasonably have foreseen or contemplated

first, that the plaintiffs would rely on the valuation in the report or, second, that they would act unreasonably in failing to obtain an independent surveyor's report for their own guidance. These submissions were founded on the fact that the defendants would know that the plaintiffs would have been provided with the building society's literature and that the building society, for its own protection, would have served with their offer the statutory notice pursuant to s 30 of the 1962 Act. Now these defendants, plainly, are in a substantial way of business in London as surveyors and valuers. The documents show that they have an address at Down Street, Mayfair, and another in Lavender Hill, London SW 11. They must have on their staff some members of the Royal Institute of Chartered Surveyors. The terms of the building society's request to them to value 1 Seymour Road indicated that they had regularly carried out valuations for the Halifax, and no doubt for other building societies. Mr Hunter's evidence is that for some six years over 90% of applicants for a building society mortgage have relied on the building society's valuation, as represented by the building society's offer of an advance, as a statement that the house in question is worth at least that sum. These applicants, and in particular applicants seeking to buy houses at the lower end of the property market, do not read building society literature, or, if they do, they ignore the advice to have an independent survey and also the terms of the statutory notice. Mr Hunter's evidence was unchallenged. No witness was called to suggest that he had in any way misrepresented the beliefs, conduct and practice of the typical applicant. I think that Mr Hunter was telling me what was common knowledge in the professional world of building societies and of surveyors and valuers employed or instructed by them. I am satisfied that the defendants were fully aware of all these matters.

The defendants' representative who surveyed and valued 1 Seymour Road noted the type of dwelling house it was, its age, its price and the locality in which it was situated. It was plainly a house at the lower end of the property market.

The applicant for a loan would therefore almost certainly be a person of modest means who, for one reason or another, would not be expected to obtain an independent valuation, and who would be certain to rely, as the plaintiffs in fact did, on the defendants' valuation as communicated to him in the building society's offer. I am sure that the defendants knew that their valuation would be passed on to the plaintiffs and that the defendants knew that the plaintiffs would rely on it when they decided to accept the building society's offer.

For these reasons I have come to the conclusion that the defendants owed a duty of care to the plaintiffs because, to use to the words of Lord Wilberforce in *Anns v London Borough of Merton*, there was a sufficient relationship of proximity such that in the reasonable contemplation of the defendants carelessness on their part might be likely to cause damage to the plaintiffs.

I turn now to consider whether there are any considerations which ought to negative or to reduce or limit the scope of the duty or the class of person to whom it is owed. Counsel for the defendants submitted that for a number of reasons of policy the plaintiffs should have no remedy against the defendants. First he said a decision in favour of the plaintiffs would encourage applicants for a mortgage to have no independent survey of the house they wished to buy. I can see nothing objectionable in a practice which would result in a house being surveyed once by one surveyor. In my view, the Abbey National, since September 1980, have adopted a sensible procedure for dealing with the survey problem, if it is a problem. Mr Hunter said that as a matter of courtesy the Abbey National now disclose their valuation report to applicants. He also said: 'We felt that we had information which had been obtained by qualified and experienced people and it was of benefit to give that information to the applicant.' In addition, the Abbey National are about to introduce a report on condition and valuation so that, as Mr Hunter put it, the applicant has the choice of either the standard building society mortgage valuation report or the report on condition and valuation which covers the popular conception of structural survey, market valuation and mortgage valuation.

Counsel also submitted that if the defendants were held liable to the plaintiffs no professional man would be able to limit his liability to a third party, even if he could do

so to his own client. He would be at the mercy of a client who might pass on his report to a third party and, as defects in the property he had surveyed might not manifest themselves for many years, he would be likely to remain under a liability for those defects he ought to have detected for a very long period, and at the end of the period, for an unlimited amount by way of damages. In my view, the only person to whom the surveyor is liable is the party named in the building society's 'Instructions to Valuer' addressed to him. That party, as well as the building society, has to be regarded as his client. That does not seem to me to be unreasonable, since, to his knowledge, his fee for the valuation is paid by that party to the building society which hands it over to him. On this submission, it can also be said that the surveyor's report is concerned with the valuation of a dwelling house, the condition of which is important only in so far as it affects its value at that time. It is common knowledge that in the ordinary way, the market value of a dwelling house is not static. Consequently, a valuation made at one time for the purpose of assessing its suitability as security for a loan would be of limited use.

Counsel for the defendants also argued that the plaintiffs do not need to establish any remedy against the defendants since they have a good claim for damages against Mr Protopapas either at common law or under the Defective Premises Act 1972 for his failure properly to carry out the repairs at 1 Seymour Road. Nowhere in the defence to the plaintiffs' claim, nor in any document before me, is there any suggestion that the plaintiffs have such a claim. In consequence, no evidence has been led by the plaintiffs to deal with the allegation.

Counsel also contended that the plaintiffs have a good claim for damages against Mr Nicolaou, who negligently failed,

among other things, to advise the plaintiffs to have an independent survey. Again, this suggestion has never previously been advanced and no evidence has been called to deal with it. It is not clear to me whether these last two arguments were addressed to me as part of what counsel called his policy argument, but whether they were or not I reject them and all the arguments directed to establishing that there are considerations which ought to negative or reduce or limit the scope of the duty to the plaintiffs to the extent that they should have no remedy against the defendants.

Finally counsel said that the plaintiffs should be held guilty of contributory negligence because they failed to have an independent survey, made no inquiries with the object of discovering what had been done to the house before they dicided to buy it, failed to read the literature provided by the building society and generally took no steps to discover the true condition of the house. It is true that the plaintiffs failed in all these respects, but that failure was due to the fact that they relied on the defendants to make a competent valuation of the house. I have been given no reason why they were unwise to do so. I have earlier read the paragraph under the heading 'Valuation' in the building society's handbook which Mr **Yianni** did not read. No doubt if the paragraph had been in stronger terms, and had included a warning that it would be dangerous to rely on the valuer's report, then I think that the plaintiffs might well have been held to be negligent. But, in my judgment, on the evidence the allegation of contributory negligence fails.

In my judgment for these reasons the defendants are liable to pay damages to the plaintiffs for the grievous loss they have suffered by the defendants' negligence.

Judgment for the plaintiffs.

Solicitors: Michael Votsis & Co (for the plaintiffs); Reynolds, Porter, Chamberlain (for the defendants).

K Mydeen Esq Barrister.

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Print Request: Current Document: 17
Time Of Request: Monday, April 20, 2009 09:12:37