

Surveyors Valuation

United Bank of Kuwait plc v Prudential Property Services Ltd

COURT OF APPEAL
EVANS, PETER GIBSON, HENRY, LJJ

27 November 1995

Valuation for loan purposes — Over-valuation — Surveyors claiming that lenders contributorily negligent — Whether plea sustainable in law — Whether lenders contributorily negligent in circumstances of the case — First instance decision in lenders' favour — Appeal dismissed

The defendants, in their capacity as surveyors, estate agents and valuers, were asked by the plaintiffs to carry out a valuation of a newly completed development at Coachmans Court, Old Cattle Market, Ipswich. At the material time it belonged to SDL. By 1990, SDL owed Lloyds Bank approximately £1.6m secured by a charge on Coachmans Court. The plaintiffs asked for the valuation as the basis for providing long-term finance to SDL which was to involve paying off Lloyds Bank and giving the plaintiffs a first charge on the property subject to the valuation proving satisfactory. The defendants, who were on the plaintiffs' list of approved valuers, valued the property at £2.5m and a loan of £1.75m was advanced on the basis of that figure. Lloyds were paid off and the plaintiffs were given first charge. SDL failed to make first repayment on the loan and went into receivership. The property was sold for £950,000.

The plaintiffs alleged negligence and maintained that they would not have made the loan but for the defendants' valuation. Further it was a "no-transaction" case in that, if the valuation had been lower, there would have been insufficient funds to pay off SDL's indebtedness to Lloyds Bank and the first charge, which the plaintiffs required, would not have been released by Lloyds. The issue of whether the court should take account of market loss in assessing damages had been decided in the plaintiffs' favour at first instance and upheld by the Court of Appeal: see *Banque Bruxelles Lambert SA v Eagle Star Insurance Co Ltd* [1995] 1 EGLR 129. The appeal in this case concerned whether the judge was wrong to reject the defense of contributory negligence advanced by the surveyors, viz a failure to carry out sufficient inquiry as to SDL's capacity to service the debt.

Held The defendants' appeal was dismissed.

- 1. The nature and scope of expert witness evidence varied widely. It was a mistake to include all expert evidence in one category as it ranged from highly technical areas to matters within the court's own experience. A matter such as interpretation of accounts was halfway between — both as to practice and opinion.**
- 2. The question of whether contributory negligence could be pleaded in a case such as this had been decided by the judge in the defendants' favour as a matter of law.**
- 3. In the light that contributory negligence was an admissible plea, the question to be decided was whether a prudent banker would have made this loan when they made it, and subsequently, when the loan was drawn down.**
- 4. That was a straightforward question of fact and the burden of proof was on the defendants.**
- 5. Although the defendants contended that the bank was negligent at both stages, there were no obvious warning signals which leapt from the page, so that they failed to satisfy their burden of proof on the balance of probabilities.**
- 6. Further, the court was not prepared to accept that there was a "highest non-negligent figure" which the defendants might have given. Even if it were permitted,**

looking at a broadly non-negligent valuation, the figure which had been given was excessive.

Ronald Walker QC and Vincent Moran (instructed by Cameron Markby Hewitt) appeared for the appellant defendants; Daniel Pearce-Higgins (instructed by Clifford Chance) appeared for the plaintiff respondents.

Copyright Reed Business Information