



Capital Alternative Fund Services (Guernsey) Ltd-v- Drivers Jonas (09/09/2011)- Negligent Valuation

The Message: Professionals should not act without the required expertise.

The Case: The High Court has held valuers liable in damages for over £18 million for a negligent property valuation but made clear that they are not liable for all losses caused by the purchase proceeding).

In a lengthy and detailed Judgment which covers many issues, the High Court held that Drivers Jonas had been negligent in their 2001 valuation of a 145,000 square foot factory outlet shopping centre to be developed at Chatham Historic Dockyard, Kent. They had valued the property at £62,850,000 (which became the purchase price) but the Court held that the correct valuation should have been only £44.8 million and Capita had overpaid £18.05 million.

The factory outlet centre opened in July 2003 but it proved extremely difficult to successfully let units and the net rents were well below those forecast by Drivers Jonas.

It was Capita's case that the valuation of a factory outlet centre situated in an Enterprise Loan requires substantial expertise in this field, particularly as the tenants pay turnover rents and the value is, therefore, so dependent on the likely turnover. In order to be able to properly predict the likely level of rental income, it was claimed that Drivers Jonas should have obtained a detailed assessment of likely consumer spend and that they failed to do so because of their lack of the necessary expertise, despite charging over £500,000 for all of their work.

Drivers Jonas claimed they did possess the relevant expertise and the losses of Capita were mainly due to the fall of the market and Capita's failings. They referred to the development as being of a very speculative nature and to it having been "conceived in a boom but born in a bust". They also claimed the Developer had been at fault and that there had been various marketing failures.

The Court agreed that the individuals at Drivers Jonas who had worked on the valuation had not had the necessary expertise to value the property as they did not have any experience of factory outlet centres and that this was not something they could learn as they went along. It held they had also failed to make a proper assessment of the location and the competence and experience of the Developer. They should have declined the instruction and were particularly at fault in relying on information as to likely rental levels from sources who were not independent, such as the Developer's agent. As a result, the Court held they vastly overestimated rental levels at year 7 at about £3,629,000 per annum based on £27.50 psf, whereas the correct rental level would have been less than half of this figure.

Capita did not restrict their claim to the over-valuation. They said this was a case where the valuer had advised as to the commercial viability of the transaction itself and whether and it should proceed, rather than just provided a valuation, and, as a consequence, should be liable for all losses suffered. Those losses were claimed to be nearly £64 million based on the current value of the property being only some £7.2 million and after taking into account financing costs and profits made.

The Court reviewed the leading case authorities in which it had been held that the appropriate measure of damages depended on the scope of the valuer's duty. If a valuer only had a duty to provide valuation evidence for its client to decide whether to proceed, then a valuer would only be liable for the consequences of his advice being wrong, not for all losses caused by the transaction proceeding. However, if a valuer had advised on whether the transaction should proceed, then it could be liable for all losses suffered as a result of a disastrous investment.

The Court held that Drivers Jonas did provide commercial investment advice but this was part and parcel of providing their valuation. It was their valuation figure that was crucial to determining the price payable and the scope of their duty was limited to ensuring their valuation was accurate. Accordingly, they were only liable for the £18.05 million over-valuation and for none of the other losses suffered due to the purchase having proceeded.