

Alexander Hickey wins on a novel point of causation of loss in valuer's negligence claim

In *Tuita International Ltd (in Liquidation) v De Villiers Surveyors Ltd* (Chancery Division 20 March 2015) the Court granted summary judgment on a novel point of causation of loss in valuer's negligence claims where there has been re-financing and re-mortgage.

Under a Facility agreed in April 2011 the Lender loaned the Borrower £2.5 million, relying on the Valuer's February 2011 valuation report (not claimed to be negligent). Later the Borrower applied to refinance and increase his borrowing to £3million with the same Lender. The same Valuer provided a valuation report in November 2011 (assumed for the purposes of the summary judgment application to be negligent), as a result of which the Lender agreed to lend up to a total of £3 million. The Lender redeemed the first mortgage by replacing it with a larger mortgage and transferred the debt into a new facility. The Borrower having defaulted, the Lender brought an action against the Valuer on the November valuation basing its loss on the total £3million facility. The Valuer applied for summary judgment on the issue of causation of loss and the Court agreed with the Valuer's argument that in law £2.5million of the alleged loss was not caused by the November valuation because it failed the 'but-for' test of casuation. Since the Lender's case was that it would not have agreed the new facility if it had been given a non-negligent valuation it followed that the Lender would still have the existing £2.5million indebtedness under the original mortgage which (although redeemed as against the borrower) was not avoided for the purposes of its negligence action against the Valuer. The Lender argued that because the Court of Appeal decided in *Preferred Mortgages v Bradford & Bingley* [2002] PNLR 35 that a lender's claim against a negligent valuer was extinguished upon redemption the but-for test of causation had to be disappplied to stop the loss falling into a legal black hole.

The Court distinguished *Preferred Mortgages* holding that it did not consider but-for causation, and was not authority for the proposition that any loss arising from that original April 2011 loan could be said to be caused by the later November valuation: there was no reason to depart from the but-for test of causation. Accordingly the loss claimed against the Valuer from the November valuation could not include the £2.5million.

The Deputy High Court Judge Timothy Fancourt KC refused permission to appeal to the Court of Appeal, noting that although it was a novel point of importance it was for the Court of Appeal to decide whether permission should be granted.

Alexander Hickey acted for the successful valuer.