

Tiuta International Ltd v De Villiers Chartered Surveyors [2017] UKSC 77

Today, the Supreme Court have handed down a unanimous judgment in *Tiuta International Ltd v De Villiers Chartered Surveyors* [2017] UKSC 77, raising a novel point of causation of loss in valuer's negligence claims. Alexander Hickey KC and Robert Scrivener acted for the successful appellants.

The claimant had loaned a borrower some £2.5 million under a facility agreed in April 2011 following a valuation report from the defendant valuer dated February 2011. The loan was secured by a charge over a property. The borrower later applied to refinance and increase his borrowing to £3 million with the same lender. The defendant provided a further valuation report in November 2011. The claimant agreed a second facility and, as part of this, redeemed the original charge and replaced it with a larger one. The borrower's debt under the first facility was transferred to the second facility. The claimant said the second valuation was negligent and sued for its alleged losses. No claim was brought in respect of the first valuation.

The defendant argued, by way of summary judgment application, that even if the claimant could show at trial the second valuation was negligent, the only loss that could be claimed were the additional sums given under the second loan agreement. The defendant won on this point at first instance, but a majority of the Court of Appeal disagreed.

On appeal to the Supreme Court, the defendant contended that the Court of Appeal had misapplied the traditional "but for" test of causation. The claimant on the other hand argued that the repayment of the first loan was a collateral benefit for which it did not need to give credit.

Lord Sumption (giving the judgment for the Court) agreed with the defendant. The claimant was unable to establish but for causation of loss in respect of the sums that had already been advanced under the first loan. He said, at paragraph [7], that the claimant "would still have lost the original loans made under the first" facility, so could not claim this as damages in an action concerning the second facility and valuation. Whilst other "legal filters" (such as remoteness and scope of duty) might mean that a valuer is liable for a different amount than the total loss suffered, the claimant nevertheless still had to show it suffered a loss in the first place, which it could not as regards the sums loaned under the first facility.

The Court also rejected the suggestion the repayment of the first loan was a collateral benefit that did not fall to be taken into account. The discharge of the existing indebtedness out of the second loan arose from the very transaction which was said to give rise to the loss, and so could not be ignored.

This decision is now the leading case on causation of loss in valuers' negligence claims where there has been a refinancing, and is a restatement of the orthodox "but for" test of causation.