Jackson Smith solicitors

Newsletter

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If a valuer gets it wrong big time what is he liable to you for?

A reader of our newsletters has requested that we present an article on the negligence of valuers. We are pleased to provide the following summary of the law as it stands in Australia.

If a valuer is negligent in the way in which he performs his valuation he or she will be liable for all of the losses suffered.

An example involved a valuation prepared for Macquarie Bank. The property was valued at $5.5 million. 65% of the valuation was loaned for a term of 3 to 5 years. In just over a year there was a default and the property was sold eventually for $2.65 million.

At the trial it was held that the true value at the time the valuation was done was $3.9 to $4 million. In the court case against the valuer the court held that the valuer was responsible for all of the losses including losses because of a drop in the property market.

The extent of the loss has been discussed in a number of court cases that have been to the High Court and the judges have held that provided the negligence of the valuer was part of the cause of loss suffered, all of the damages could be recovered against the valuer.

> When a valuer is negligent all of the loss that flows from the negligence may be recovered from the valuer.

In England the position is quite different. If someone wishes to sue a valuer the only damages that can be recovered are those directly related to the value of the property and the faulty valuation.

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One example involved an advance of £1.75 million on a security valued at £2.5 million. The correct valuation was between £1.8 and £1.85 million. Default occurred and the property sold for £950,000.

The House of Lords held that damages should be limited to "the consequences of the valuation being wrong". This meant that the lenders had available to them as security between £700,000 and £650,000 and this was the damage that could be claimed. The damage was the difference between what was claimed to be the value— £2.5 million and what was the correct value £1.8 million or £1.85 million.

In summary, the test in Australia is that if the negligent valuation contributed in a real way to the loss suffered by the party who sought the valuation, the valuer would be held responsible for all of the damage suffered by that party. The English approach of restricting the loss has been rejected by our courts.

For any further information or assistance contact Peter Jackson, at Jackson Smith, free call, 1800 687 217.

We hope that our newsletters are of interest to you. If you wish a particular topic examined, please let us know.

Professional advice should be sought before applying the information in this newsletter to particular circumstances.