



Ella Davis

## Professional Liability Update

### Hughes Holland v BPE Solicitors [2017] UKSC 21

This was an appeal concerning the correct approach to damages where a client incurred loss in a transaction that, but for his advisor's negligence he would not have entered into, but as a result of risks which it was no part of the advisor's duty to protect against.

Mr Little approached Mr Gabriel asking for a loan of £200,000 ("the loan"). Mr Little caused Mr Gabriel to understand that he owned a disused heating tower and that planning permission had been granted to develop it at a cost of £200,000. Mr Gabriel assumed that the loan would be used to finance the development. The building was in fact owned by a company, High Tech, subject to a charge in favour of a bank securing a loan of £150,000. Mr Little intended to transfer the property to a special purpose vehicle and then to pay the loan to High Tech which would use it to discharge the charge and High Tech's bank loan, leaving nothing to fund the development. Had Mr Gabriel known this he would not, so the judge found, have signed the loan documentation.

Mr Gabriel instructed BPE Solicitors ("BPE"), via Mr Little, to draw up a facility letter and charge over the building. Mr Little told the solicitor that he intended to sell the building to the SPV with the money lent by Mr Gabriel. The solicitor did not confirm these instructions with Mr Gabriel but, by using a template stating that the loan would be used to fund development

costs, unintentionally confirmed Mr Gabriel's incorrect understanding of the nature of the transaction.

Mr Gabriel lost all his money and (in addition to other unsuccessful claims) sued BPE in negligence. The judge held that the solicitor should have told Mr Gabriel of Mr Little's plans and should not have included the incorrect reference to the proposed use of the loan in the documentation. The judge awarded the entire loss on the basis that Mr Gabriel would not have entered into the transaction had he not been misled. The Court of Appeal reduced the damages to nil, attributing the loss to Mr Gabriel's misjudgements.

The Supreme Court dismissed Mr Gabriel's appeal for the following reasons:

- The evidence sufficiently showed that the value of the property would not have been enhanced had the loan been spent on its development.
- It is a necessary but not always a sufficient condition for the recovery of a loss that it would not have been suffered but for the breach of duty. It must also be demonstrated that protecting the Claimant from loss of the relevant kind is within the scope of the Defendant's duty.
- Two fundamental aspects of the reasoning in SAAMCO have tended to be overlooked:
  - First, where the Defendant is to supply part only of the material on which the

- client will base his decision, the Defendant has no legal responsibility for his decision; and
- Second, the SAAMCO principle has nothing to with the causation of loss. It is only a tool for distinguishing between loss flowing from the fact that as a result of the Defendant's negligence the information was wrong, and loss flowing from the decision to enter the transaction at all.
- BPE did not assume responsibility for Mr Gabriel's decision. Their instructions were limited to the drawing up of the documentation and their duty only extended to confirming Mr Gabriel's assumption about the use to which the money would be put. Had his assumption been right, he would still have lost all his money and so the loss was not within the scope of BPE's duty.

**Ella Davis**