



Charles B Lawrence & Associates v Intercommercial Bank Ltd – Assessing the Scope of Duty of Valuers whilst revisiting the SAAMCO Principle



Introduction

The recent case of ***Charles B Lawrence & Associates v Intercommercial Bank Ltd (2021) UKPC 30*** saw the Privy Council reviewing the SAAMCO principle in the context of a negligent valuation case where it transpired that a guarantor had no legal title to the land that was being mortgaged, causing the security to be worthless. The central question was how precisely the SAAMCO principle applied to these facts.

Although the Privy Council were considering an appeal from the Court of Appeal of Trinidad and Tobago, English law was applied when doing so. The decision is of persuasive authority in England and Wales.

Therefore, we have prepared a note on the decision.

What is the Privy Council?

The Judicial Committee of the Privy Council is the final court of appeal for the UK overseas territories and Crown dependencies. The Justices of the UK's Supreme Court sit as judges in the Privy Council. The decisions are of persuasive authorities for the UK courts.

THE FACTS

Intercommercial Bank Ltd ("the Bank") loaned to Singapore Automotive Trading Limited ("the Borrower") \$3 million.

The loan was guaranteed by Rafferty Development Ltd ("the Guarantor"), who provided security by way of a mortgage over some land ("the Land").

The Land was valued by Charles B Lawrence & Associates ("the Valuer") at \$15 million. The Valuer made clear that the valuation **assumed** that the Guarantor had good title and planning permission would be granted for commercial development. The Bank relied on the valuation of the Valuer.

Ultimately, the Borrower and the Guarantor failed to make repayments pursuant to the terms of the loan.

Subsequently, the Bank discovered that: (a) the Land was worth significantly less than the value of \$15 million due to the Land only being suitable for residential development (rather than commercial development); and (b) the Guarantor did not possess good title to the Land, causing the security to be valueless.

Due to the Guarantor not having good title to the Land the Bank sued their conveyancers (whose job it was to ensure the Guarantor had good title to the land) and obtained a settlement sum of \$2.4 million.

The Bank also sued the Valuer. The courts in Trinidad and Tobago found damages should be assessed as the amount lent plus interest less the settlement sum obtained from the conveyancers. That resulted in an award of just over \$2 million (taking into account a 20% discount for contributory negligence on the part of the Bank). Essentially, this award was based on the idea that the losses recoverable from the valuer would include those due to the Guarantor not having good title to the land (even though the valuer was not required to advise the Bank whether the Guarantor had good title to the Land).

The SAAMCO Principle

In very broad terms, in the Supreme Court decisions of **Manchester Building Society v Grant Thornton UK LLP [2021] UKSC 20** and **Meadows v Khan [2021] UKSC 21** it was held that that a professional is not liable in the tort of negligence or in contract for loss caused by matters that fall outside the scope of the professional's breach of duty. We call this the "SAAMCO Principle".

What did the Valuer argue at the Appeal to the Privy Council?

The Valuer appealed the decision of the court in Trinidad & Tobago to the Privy Council.

The Valuer relied on the SAAMCO principle that a valuer is not liable in the tort of negligence or in contract for loss caused by matters that fall outside the scope of the valuer's duty of care.

The Valuer used the SAAMCO principle to argue that it was necessary to distinguish between:

- (1) the loss which was suffered because of the Valuer's negligence, and which was within the scope of its duty - i.e., the loss suffered because the Land was overvalued by being suitable for commercial development, and
- (2) the loss which was suffered because of the Conveyancer's negligence, and which was outside the scope of its duty and therefore irrecoverable from the Valuer - i.e., the loss suffered because the title was defective (as the issue of ensuring that the Guarantor had good title formed part of the conveyancer's duty).

The Valuer submitted new calculations for damages totalling a sum of \$833,204. The Valuer explained this figure was calculated by the loan amount of \$3 million having the residential value of the Land at the date of the loan (assuming good title as the lack of good title was not something for which the valuer was responsible for) of \$2,375,000 being deducted, giving a figure of \$625,000. Then a further deduction of 20% was to be made to reflect the Bank's contributory negligence. Following that interest was to be added.

What was the Privy Council's decision and what is the significance?

The Privy Council agreed with the Valuer's arguments, application of the SAAMCO principle and its calculation of damages. The Privy Council stated:

"Comparing Meadows v Khan to the facts of this case, one can see that, just as the haemophilia loss, but not the autism loss, was within the scope of the doctor's duty of care so here the commercial, rather than residential, overvaluation loss, but not the defective title loss, was within the scope of the valuer's duty of care. And in each case that conclusion follows from the purpose of the advice or information given by the professional and hence the risk that was being guarded against."

This decision further highlights the importance of identifying the scope of a valuer's duty and whether the risk of loss in question was something which the valuer was supposed to protect against.

This allowed the assessment of damages to exclude the factor, which was outside the scope of the Valuer's duty, being the loss caused by the defect in title, from the total loss caused by the Valuer's negligence.

The difference in the value of the claim according to the approaches of the courts in Trinidad & Tobago and the Privy Council was about \$1.2 million.

Overall

The decision reemphasises further the critical importance of analysing what the scope of a professional's duty of care is and the losses that follow from that breach of duty.

Further Information

Given the generality of the note it should not be treated as specific advice in relation to a particular matter as other considerations may apply.

Therefore, no liability is accepted for reliance on this note.

If specific advice is required, please contact one of the Partners at Caytons who will be happy to help.