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Judgment: approved by the Court for handing down | *Delivered:* **05/08/2013**
*(subject to editorial corrections)**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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QUEEN'S BENCH DIVISION (COMMERCIAL)

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BETWEEN:

AURORA LEASING LIMITED

Plaintiff;

-v-

COLLIERS INTERNATIONAL BELFAST LIMITED

Defendant.

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WEATHERUP J

[1] The plaintiff's claim is for damages for loss and damage alleged to have been sustained by reason of the professional negligence of the defendant as surveyor and valuer who completed a valuation of property for the purposes of a loan proposed to be made by the plaintiff to Rippington Bristow Limited ("the company") with personal guarantees provided by Paul and Mary Campbell and security provided by the property owned by the guarantors, being the property the subject of the defendant's valuation. Mr Hanna QC and Ms Simpson represented the plaintiff and Mr Simpson QC the defendant.

[2] On 7 May 2009 the plaintiff advanced to the company the sum of £901,000 repayable by 59 monthly instalments, making a total repayment of £1,289,000 to include interest. The loan was secured by the guarantees of the Campbells and the freehold title to the Campbells' property at Terrace Hill, Ballynahatty Road, Shaw's Bridge, Belfast. The property was subject to a prior mortgage in favour of the Bank of Scotland of approximately £2M.

[3] In January 2008 the defendant was instructed by the Campbells to provide a valuation in respect of the property which was then valued by the defendant at £4.5M. In August 2008 the defendant was instructed by the plaintiff to provide an

updated valuation which was then valued by the defendant at £5M. This valuation was confirmed on 21 January 2009 and 31 March 2009 and 24 April 2009. Acting on the basis of the valuations the plaintiff claims to have been induced to advance the sum of £901,000 to the company, secured by the guarantees and the charge on the property. The plaintiff claims that the defendant was negligent in conducting the valuations of the property, which was worth very much less than the valuations. The company defaulted on the repayments and the Campbells have not made any payment on foot of the guarantees. Judgment was obtained against the Campbells on 19 October 2010 for the amount then due to the plaintiff. However, the Campbells have been declared bankrupt and the company has been placed into compulsory liquidation. Nor has the amount due been realised from the property as this is now believed to be worth no more than the amount that is outstanding on the first mortgage to the bank. Accordingly the plaintiff has not recovered the amount due. Thus the plaintiff claims from the defendant the amount due on foot of the loan to the company together with interest due on the loan as well as the wasted costs of pursuing the company and the Campbells for repayment, being £20,938.44. The defendant denies liability to the plaintiff and in any event alleges that the plaintiff was guilty of contributory negligence in making the loan to the company in the circumstances.

[4] The defendant produced valuation reports on the property. The first report in January 2008 was prepared for the Campbells and valued the property at £4.5M. The report described the property as comprised of a unique five bedroomed detached residence located in an idyllic rural setting in approximately 7.8 acres of mature lands and surrounded by National Trust grounds. A fully refurbished stable block with first floor function room and adjacent dog kennels were located towards the entrance to the grounds. Planning permission had been sought for a replacement dwelling on the lands. Within the landscaped gardens additional elements included an outdoor swimming pool and a paddock area. The stable block was stated to be located close to the main house in a large two storey detached building which was then undergoing a complete refurbishment. The valuation appraisal was conducted by appraisal of the location, described as one of the most desirable residential locations in Greater Belfast where over the previous 12 months there had been a considerable weight of money changing hands within the surrounding area for such a limited product; an appraisal of the property stated that it was a truly magnificent dwelling and wholly unique within Belfast and the Province with generous internal accommodation, excellent outdoor facilities and amongst all the great houses of south Belfast, Terrace Hill could be regarded as best in class; a market commentary stated that given the unique nature of this property it was difficult to obtain any direct comparables but referred to a number of other properties in south Belfast. The properties included a house in Deramore Park agreed for sale in November 2007, a property in Adelaide Park which had sold in June 2007 and a property known as The Weir which was said to comprise eight bedrooms and was a listed dwelling, sitting in landscaped grounds extending to some 8.21 acres which had sold in 2007 for a sum in excess of £4M.

[5] The defendant's valuation report of August 2008 was prepared for the plaintiff and valued the property at £5M. Michael Gerson, managing director of the plaintiff, operates the plaintiff company with members of his family. The report commissioned by the plaintiff repeated much that had been contained in the first report to the Campbells and referred to the stable block located close to the main house and a large two storey detached dwelling currently undergoing a complete refurbishment, as was stated in January 2008. The valuation appraisal was again an appraisal of location and again stated that over the previous 12 months there had been a considerable weight of money changing hands within the surrounding area for such a limited product; the appraisal of the property was in the same terms as before; the market commentary extended to an additional property in south Belfast and to Foxley Hall in Dromore which comprised a new-built detached residence set in approximately 10 acres and which had recently sold for £2.5M, which the report stated was a similar property but that Terrace Hill was in a much superior location.

[6] There followed correspondence between the plaintiff and the defendant from time to time seeking confirmation of the valuation. On 21 January 2009 the defendant stated that since the original report the property had obtained planning permission for refurbishment of the stable block and planning permission for a replacement dwelling was due to be renewed; as a result of the planning position it was stated that although the residential market had suffered in the intervening six months it was felt that this had been compensated for by the granting of planning permission for the stable block and the positive response from the planning authority in respect of planning consent for the replacement dwelling.

[7] A further note from the defendant forwarded on 31 March 2009 was to confirm that the letter of 21 January could still be relied on, that planning for the replacement dwelling was due to be granted in the next 4-8 weeks, that this, along with other planning consents, had assisted in off-setting the fall in values of house prices within Northern Ireland. The Northern Ireland Residential Property Price Index issued by the Northern Ireland Statistics and Research Agency showed a peak in prices in the third quarter of 2007 at 199 (from 100 in the first quarter of 2005) which had fallen to 150 by the third quarter of 2008 and remained around 130 throughout each quarter of 2009.

[8] On 24 April 2009, after a request from the plaintiff which asked the defendant to "…. please address a new current up-to-date valuation of the property in its present state and in present market conditions….", the defendant replied "…. to confirm that in its current state to include existing planning permissions etc. the market value of the subject property is £5M….".

[9] The loan was advanced in May 2009. Shortly thereafter the company defaulted on the repayments. On 18 December 2009 the plaintiff obtained a valuation report in respect of the property from P M McGibbon and Company, chartered valuers and surveyors and commercial estate agents. The value was stated to be £2.25M -£2.5M, a matter of course of great concern to the plaintiff.

Expert Evidence.

[10] As expert witness on behalf of the plaintiff, Beth Robinson of Templeton Robinson estate agents valued the property at May 2009 at £2M. As expert witness on behalf of the defendant, Gerry O'Connor, estate agent, valued the property at April 2009 at £3.75M.

[11] Ms Robinson's report referred to the property in January 2008, the date of the defendant's first report, as being worth £3M, in August 2008, when the defendant's second report was prepared, at £2.6M and by the date of the loan in May 2009 at £2M. Ms Robinson's firm had sold Terrace Hill in 2003 to the Campbells for £1.6M. Prior to that in 2002 in an off-market transaction the property had been sold to an unnamed rock star for some £2.2M, but he never took up residence and placed the property on the open market within two months of completion.

[12] Ms Robinson addressed a list of comparables which included those properties referred to by the defendant. The defendant had considered The Weir to be a significant comparable. Ms Robinson considered the location of The Weir, together with the arts and crafts design, to be superior to and in greater demand than Terrace Hill. The Weir had been purchased off-market in December 2008 for £4M, with £700,000 spent on renovations and was then on the market for £3.75M. On the other hand Foxley Hall in Dromore was considered by Ms Robinson to be a significant comparable. Foxley Hall was stated to be a similar size property with similar size lands in a sought after area and would not justify a difference of £2.5M between the selling price of Foxley Hall at £2.5M and the defendant's valuation of Terrace Hill at £5M.

[13] Mr O'Connor's report on behalf of the defendant attached a list of comparables. He referred to Quinton Castle in Cloughey which in November/December 2006 had sold for £3.75M, requiring around £1.5M refurbishment. His report also referred "more notably" to The Weir which had been put on the market in February 2009 for £4M, although stated to be in need of refurbishment. His valuations of Terrace Hill throughout the period of the defendant's valuations was £3.75M.

[14] The two expert witnesses gave concurrent evidence. This exercise is becoming more frequent in the Commercial Court. The experts gave evidence together. Each outlined their position and commented on the position of the other. I asked questions of each and in effect chaired a discussion of the issues. Counsel then asked questions of the experts. The receiving of the expert evidence in this manner expedites the process and serves to focus on the differences. The differences tend to be discussed by both experts at the same stage of the process rather than each expert holding the floor for the duration of their evidence before the other expert does the same. This approach is beneficial to an understanding of the differences. Expert witnesses would benefit from training in the giving of their evidence concurrently.

[15] Expert witnesses play an important role in the business of the Commercial Court. Practice Direction No 6 of 2002 on "Expert Evidence" deals with the duties of experts. As the Practice Direction makes clear the expert witness owes a duty to the Court to assist on matters within their expertise and this duty overrides any obligation to the party from whom the expert has received instructions or by whom the expert is to be paid. I draw attention to this duty without implying any criticism of the expert witnesses in this case. However, an awareness of this duty is not always apparent on the part of expert witnesses. It may be that the time has arrived for a form of accreditation of expert witnesses by an appropriate body that has provided training on the role of the expert witness and has set a standard that the expert has attained.

[16] Ms Robinson's evidence adopted her report and relied on the fall in the property market, the property being removed from the high value BT9 district of south Belfast, the questionable added value of the outbuildings, the access via narrow country roads, the absence of public transport, the absence of schools in the immediate area and the excellent comparable to be found in Foxley Hall. Mr O'Connor's evidence adopted his report and described Terrace Hill as a special property appealing to a particular kind of client, it was not as affected by the general decline in residential prices as other properties, the outbuildings had been undervalued and The Weir was considered to be a top comparable.

[17] Evidence was also given by representatives of the defendant, namely William Millar, and William Kennedy, joint Managing Directors of Colliers International, and Mark O'Kane, a surveyor and valuer with the defendant firm. Mr Millar, is a Chartered Surveyor who inspected and reported to the Campbells in January 2008 in conjunction with Mr L. Gordon the surveyor employed by the defendant. In August 2008 Mr Millar inspected and reported to the defendant in conjunction with Mr O'Kane. On each occasion Mr Millar monitored the process and signed off on the reports. He supported the valuations provided by the defendant. The valuations were said to be informed by the refurbishment of the outbuildings between the dates of the two reports and the resilience of the high end market despite the general fall in prices. The Weir was described as the most viable comparable, although The Weir was listed, adjacent to a busy roundabout and in need of repair. Dromore was not considered comparable to south Belfast. The Weir and Terrace Hill were considered to be beyond the value of the Malone Road professional houses. Mr O'Kane, who took over from Mr Gordon for the valuations carried out for the plaitiff, also supported the defendant's valuations for the reasons given by Mr Millar.

[18] Mr Kennedy, while not directly involved in the reports on Terrace Hill, gave evidence on the approach to the valuation of property that a Chartered Surveyor brings to the task as opposed to the approach of an Estate Agent. Mr Millar and Mr O'Kane also gave evidence to the same effect. Chartered Surveyors have professional qualifications that are not required of Estate Agents. As members of the Royal Institute of Chartered Surveyors they apply what they call "Red Book" valuations

based on professional valuation guidelines and procedures and apply due diligence to the process. Due diligence concerns the manner of instructions, the detailed inspection, the structural condition, the title, covenants and planning permissions and the evidence of comparables. The Chartered Surveyor is not in business as a selling agent and brings objectivity to the exercise whereas the Estate Agent may be too subjective, being too close to the seller, the market and the volume of business. The financial institutions look to Chartered Surveyors to provide valuations for lending purposes.

[19] The defendant's valuation reports stated that where the defendant had received instructions to value property they had done so in accordance with PS 4.1 of the Appraisal and Valuation Manual issued by the Royal Institution of Chartered Surveyors as follows -

"Market Value" was stated to be - "The estimated amount for which an asset should exchange on the date of valuation between a willing buyer and a willing seller in an arm's-length transaction after proper marketing wherein the parties had each acted knowledgeably, prudently and without compulsion."

"Open Market Value" was stated to be – "An opinion of the best price at which the sale of an interest in property would have been completed unconditionally for cash consideration on the date of valuation, assuming:

(a) a willing seller;
(b) that, prior to the date of valuation, there had been a reasonable period (having regard to the nature of the property and the state of the market) for the proper marketing of the interest, for the agreement of price and terms for completion of the sale;
(c) that the state of the market, level of values and other circumstances were, on any earlier assumed date of exchange of contracts, the same as on the date of the valuation;
(d) that no account is taken of any additional bid by a prospective purchaser with a special interest; and
(e) that both parties to the transaction have acted knowledgeably, prudently and without compulsion."

[20] The defendant contended that the evidence of the estate agents was not appropriate to enable the Court to deal with allegations of negligence by surveyors and valuers. The defendant considered the evidence of the surveyors and valuers to be superior expert evidence because as members of the Royal Institute of Chartered Surveyors they apply the "Red Book" valuations based on professional valuation guidelines and procedures and due diligence in a manner that the defendant contends is not applied by estate agents who are undertaking a different exercise as market based residential estate agents.

[21] The general position is that, in dealing with professional negligence, an expert witness comes from the profession under investigation, in this case surveyors and

valuers. *Jackson and Powell on Professional Negligence* at paragraph 6-007 states that expert evidence to the effect that a reasonably competent member of the defendant's profession would not have committed the act or omission in question is generally necessary before the Court will find that there has been negligence.

[22] In Samsung v Metcalffe Hamilton and Company [1998] PNLR 542 where a defendant surveyors' appeal from a finding of negligent survey was allowed on the ground that the expert evidence was from a structural engineer, Butler-Sloss LJ stated –

> "…. a court should be slow to find a professionally qualified man guilty of a breach of his duty of care and skill towards a client (or third party) without evidence from those within the same profession as to the standard expected on the facts of the case and the failure of the professionally qualified man to measure up to that standard."

[23] In Co-operative Group Limited v John Allen Associates [2010] EWHC 2300 TCC Ramsey J dealt with this issue in the context of civil and structural engineering standards being addressed by an expert geotechnical engineer. Ramsey J accepted the evidence of the expert even though his was not the same discipline as that under investigation. The witness had stated that he did feel qualified to give a view on the professional responsibilities and actions of structural and civil engineers, particularly in relation to geotechnical matters. Ramsay J was satisfied that the witness could give useful evidence of the professional practice of civil and structural engineers in relation to geotechnics and what might be expected of them in relation to their approach to geotechnical issues. However Ramsay J also stated that while the witness could provide useful evidence he had to bear in mind that he was a leading geotechnical engineer and must be cautious not to attribute to the defendant a duty to act as a professional geotechnical engineer would have acted in the circumstances of the case.

[24] Surveyors and valuers apply RICS standards in the valuation of property. Their valuations include reference to values achieved in the sale of comparable properties. In the residential market these values are obtained through the information generated by residential estate agents. I am satisfied that the evidence of the estate agents is admissible in relation to the valuation conducted by the surveyors and valuers. Were it appropriate to do so, different weight might be attributed to the evidence of different experts as to the valuation of property. In the present case there was no independent expert surveyor and valuer. The independent expert evidence on both sides was from estate agents. The evidence of the surveyors and valuers employed by the defendant was not independent. I do not accord any greater weight to the evidence of the surveyors and valuers but rather, by reason of their independence, I accord greater weight to the evidence of the estate agents.

[25] In relation to the valuation of the property I am satisfied that the principal comparator was The Weir, another landed property in south Belfast. I note what were described as the disadvantages of The Weir, namely the property was listed, was adjacent to a major roundabout and was in a state of some disrepair when sold for £4M. The Weir had the benefit of an urban location within the most valuable area of south Belfast with easy access to schools and transport.

[26] Other suggested comparators were the large residential properties in south Belfast. These were dwelling houses without land and I am satisfied that they had a different appeal to that of the properties at Terrace Hill and The Weir. The large residential properties were valued in the range of £2M-£3M. I consider them to be less comparable to Terrace Hill than was The Weir.

[27] Foxley Hall Dromore was comparable to Terrace Hill in terms of the size of the premises and the size of the land attached, but not comparable in terms of location. Dromore is 20 miles south of Belfast. Similarly Quinton Castle is to be distinguished as a particular style of property and not in a comparable location.

[28] I am satisfied that the value of Terrace Hill was above that of the residential properties without land in south Belfast and below that of The Weir in south Belfast. In April 2009 when the last request was made for confirmation of the value of the property at Terrace Hill I conclude that the value of the property was of the order of £3M to £3.75M.

[29] **The valuer owes concurrent duties in contract and tort to exercise reasonable care and skill in completing the valuation. Was the valuation within the range of values that might have been given by a competent valuer exercising reasonable care and skill?**

It will be apparent from the value of £3M to £3.75M that has been attributed to Terrace Hill that the valuation of the property by the defendant at £5M was a significant overvaluation. Initially the valuation had been £4.5M which was also an overvaluation. By August 2008 which was the peak, if not past the peak, of the housing market in Northern Ireland the defendant's valuation was £5M. In 2009 with values having fallen generally the defendant continued to value the property at £5M as it was considered that the planning permissions counteracted what were acknowledged to be falling values. The defendant's approach was that there continued to be a limited number of high value purchasers in the market who would be interested in this type of property. It is not clear whether the initial valuation reports were made on the basis of there being no planning permissions. I conclude that the valuations that were attributed to the property by the defendant were unwarranted. The valuations were a significant overvaluation such as to amount to a breach of the defendant's duty to exercise reasonable care, competence and skill.

[30] **The valuer's duty must extend to the kind of loss that the plaintiff has suffered. Did the valuer's duty to the plaintiff extend to the kind of loss suffered?**

At one time recovery of the loss sustained was considered in terms of remoteness of damage. Nowadays the loss is considered in terms of the duty of care owed to the person suffering the loss. The loss suffered by the plaintiff was the advance made by the plaintiff, being the kind of loss that falls within the valuer's duty as being that which he could reasonably expect to arise from a failure to exercise reasonable care and skill.

[31] **What was the actual loss to the plaintiff?**

If the valuation of the property had been stated by the defendant to be £3M to £3.75M, I conclude that the plaintiff would probably not have made any loan to the company. The plaintiff was clearly concerned to establish that the loan to value ratio provided a sufficient cushion between the amount of the loan and the value of the property, taking account of the existing loan on the property of some £2M owed to the first mortgagee. When Mr Gerson on behalf of the plaintiff was asked whether or not a reduced loan might have been made, given the reduced cushion from the valuation that ought to have been provided by the defendant, he said that the plaintiff would probably not have been justified in making the loan. His view was that there would have been a more limited return from a reduced loan and that would have called into question whether the loan would have gone ahead at all. Reduced profitability for the plaintiff meant that it would not have undertaken the risk. Acceptable profit came from granting an extensive loan of £901,000. With £2M owed to the bank and £901,000 to the plaintiff the loan to value rate was 58% on a value of £5M. A suitable cushion was not available if the value of the property was £3M to £3.75M. I accept the evidence that with increased loan to value the risk and return may not be acceptable. The overvaluation of the property was £1.25M to £2M, being the difference between the actual value range of £3M to £3.75M and the incorrect valuation of £5M. The excess valuation exceeds the amount of the advance. The loss sustained by the plaintiff was the loan of £901,000, less the payments made by the company.

[32] **There must be a causal link between the breach and the damage. Was the defendant's breach of duty the cause of the loss to the plaintiff?**

I am satisfied that if a competent valuation had been prepared the plaintiff would not have made the loan. The negligent valuation occasioned the advance to the company. The loss sustained by the plaintiff was the loan of £901,000, less the payments made by the company. The breach of duty was the cause of the loss.

[33] **What loss is recoverable by the plaintiff?**

The plaintiff should be put in the position it would have been in if the defendant had properly discharged its duty.

The plaintiff should recover the £901,000 less the payments made by the company.

The plaintiff also claimed the loss of the interest due under the contract with the company for the loan. However the defendant valuer does not warrant that the borrower will pay the contractual charges and interest for the term of the loan. The interest due under the contract with the company is not a recoverable item against the defendant. The House of Lords rejected such an approach in Swingcastle v Gibson [1991] 2 AC 223.

The plaintiff may recover interest on the amount of the loss. I do not have any evidence as to the cost to the plaintiff of providing the finance. I propose to award interest at the rate of 5% from the date of the loan to the date of judgment.

There is also a claim for £20,938, being the costs incurred by the plaintiff in the attempt to recover the loss, which sum I award to the plaintiff, together with interest at 5% from the date of payment by the plaintiff.

[34] Was the Plaintiff guilty of Contributory Negligence?

The defendant alleges contributory negligence on the part of the plaintiff on the ground that, even if the defendant was negligent in relation to the valuation and that negligent valuation caused loss to the plaintiff, which I have found to be the case, nevertheless there should be a reduction because of the imprudent actions of the plaintiff in advancing the loan to the company without adequate inquiry as to the circumstances of the company and the guarantors and the property that was to provide security.

[35] The defendant offered the expert evidence of Nicholas Baxter, a partner in Baxter's Business Consultancy, who has 37 years' experience in the financial services industry, having been an employee of lending institutions and being now self-employed in financial services. In terms of risk analysis Mr Baxter identified three key principles, namely character, capability and collateral and he analysed the plaintiff's approach to this lending by reference to those principles. He described the risk profile of the mortgage application in the present case as high because of the large amount of the loan, the high value property, falling house prices, the absence of credit search, the absence of mortgage history, the absence of company accounts, the absence of confirmation of income and the absence of confirmation of planning consent.

[36] The plaintiff engaged in what was described as 'non-status lending' and was not regulated by the Financial Services Authority. Nevertheless, Mr Baxter considered that lending industry standards should be applied to the plaintiff's lending. Relevant factors included responsible lending with a proper assessment of the borrower's ability to repay. Complaints against the plaintiff's conduct were that the plaintiff did not have a protocol for lending on residential property; no adequate searches were carried out against the Campbells or the company; there were what were described by the defendant as red flag items which demanded further inquiry;

proceedings by HSBC and a bankruptcy petition against Mr Campbell were initially undisclosed; searches revealed charges against the company that were not disclosed and the viability of the company was in question. The plaintiff expressed exasperation with the introducing agent about the difficulty in extracting information in relation to the Campbells and the company.

[37] The transaction concerning the loan was not a traditional residential mortgage arrangement. This was an unregulated commercial loan to a company which had a business plan to enter the Irish art market on the basis of a loan secured on the residential property of the promoters of the company. It was a transaction of a different character to domestic lending for a house purchase. This was not a market in which the plaintiff was generally involved as this was only the second loan secured on property undertaken by the plaintiff, in both cases leading to default by the borrower.

[38] To succeed in a claim for contributory negligence the negligent valuer will have to prove that some lack of care on the part of the lender (in respect of the lender's business interests) caused or contributed to the loss, despite the negligent valuation - *Jackson and Powell on Professional Liability* at paragraph 10-179.

[39] In HIT Finance v Lewis and Tucker [1993] 2 EGLR 231Wright J considered that the apparent cushion provided by the security was such that if the borrowers turned out to be men of straw the lenders were entitled to regard themselves as more than adequately covered for the capital and interest and enforcement costs but added –

> "I am not suggesting that the prudent lender, merely because he has the comfort of more than adequate security, is entitled to shut his eyes to any obviously unsatisfactory characteristics of the proposed borrower."

[40] In Paratus AMC v Countrywide Surveyors Limited [2011] EWHC 3307 liability for a valuation in advance of a loan was not established but contributory negligence was considered. While rejecting the submission that a high loan to value policy of 90% was itself negligent, His Honour Judge Keyser QC, sitting as a High Court Judge, stated that if the lender was going to make an advance with a high loan to value the lender needed to ensure that it had properly investigated and verified the matters of central importance. The lender had failed to do so in two respects, namely to investigate debts that had not been disclosed but had been uncovered and to investigate the level of the borrower's income. It was concluded that had these steps been taken the loan would not have been made. A reduction of 60% of the entire loss would have been made if liability had been established.

[41] There was a substantial cushion provided to the plaintiff by the defendant's valuation and it was intended by the plaintiff that they should maintain such a cushion. Principally the plaintiff sought protection through a significant cushion rather than by the security of repayment by assurances on the capacity to repay. To

reflect the risks that the plaintiff appreciated were present recourse was had to increased charges.

[42] Has the lender acted imprudently? I am satisfied that the plaintiff ought to have made further inquiries as to the circumstances of the Campbells and the company and followed up on warning signs arising from the failure to disclosure certain information about the Campbells and the company. Accordingly, I am satisfied that the plaintiff did not take all the measures that a reasonably prudent lender should have taken. I find contributory negligence to the extent of 20%.

[43] There will be judgment for the plaintiff for the amount of the advance of £901,000, from which should be deducted all payments made by the company, both as to capital and interest. The plaintiff contended that only the capital payments should be deducted and that interest would not be charged to the defendant for the period of interest payments made by the company. However, the plaintiff's contention is an aspect of the approach rejected by the House of Lords in Swingcastle v Gibson. To the balance due after the deduction of the total repayments from the amount of the loan should be added interest from the date of the loan to the date of judgment at 5% per annum. Further the plaintiff will recover the expenditure of £20,938 together with interest from the date of payment of that sum to the date of judgment at 5% per annum. There will be a reduction of 20% from the total to reflect the contributory negligence of the plaintiff.