

**SAAMCO Restated:
BPE Solicitors –v- Hughes-Holland (in substitution for Gabriel)**

The Supreme Court recently gave Judgment in a landmark decision in the area of professional negligence. In the case of *BPE Solicitors and another –v- Hughes-Holland (in substitution for Gabriel)* the Supreme Court revisited the seminal ‘SAAMCO’ case which placed a limit on the liability of professional advisors (often referred to as the ‘SAAMCO cap’). The Court in SAAMCO held that a person who was under duty to advise as to what course of action to take would be liable for all the foreseeable consequences of the action taken on reliance on that advice if it was negligent. That was to be distinguished from a person who was under a duty to provide information for the purpose of enabling someone to decide on a course of action. They would be liable only for the consequences of the information being wrong.

The SAAMCO case involved a negligent valuation of property by a valuer. The principles established in that case are relatively simple to apply to valuer cases but an element of confusion and misunderstanding has crept into the jurisprudence where the principles have been applied to cases involving solicitors. The BPE decision clarifies the application of the principles to solicitors’ claims and, importantly, overturns a body of case law which had created an exception to the ‘SAAMCO cap’ in cases where the information in question would have shown that the transaction contemplated was unviable or fraudulent. It thereby all but sweeps away so-called ‘no transaction’ claims.

Facts

The case was an appeal of the Court of Appeal’s decision in *Gabriel v Little*. Mr Hughes-Holland is Trustee in Bankruptcy of Mr Gabriel, a semi-retired businessman and friend of Mr Little. In late 2007, Mr Gabriel agreed in principle to lend the sum of £200,000 to Mr Little in connection with a proposed development of a disused heating tower at Kendall airfield. Mr Gabriel understood that the capital injected by him would be utilised to finance the development. In fact, the building belonged to 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 an SPV which would use Mr Gabriel’s funds to discharge the loan and charge, leaving little available to cover development costs. It was established that Mr Gabriel would not have agreed to the loan had he fully understood the true nature of the transaction.

Mr Gabriel retained an assistant solicitor at BPE Solicitors to draw up a facility letter and charge over the building. Unusually, the instructions emanated from Mr Little, who left a voicemail message with the solicitor to the effect that he intended to sell the building to the SPV and that Mr Gabriel would lend him the money. The solicitor did not seek clarification of his instructions from Mr Gabriel but proceeded to utilise a template from an earlier abortive transaction which stated that the loan monies would be used to assist with development costs (and thereby unwittingly confirmed Mr Gabriel’s misconception).

No real development of the property ever began and Mr Gabriel lost the entire sum invested. The trial Judge accepted Mr Gabriel’s case that he was entitled to damages representing the entire loss which he had suffered by entering into the transaction, on the basis that he would not have advanced the sums at all if he had not been misled about the proposed use of the loan monies. The Court of Appeal allowed the solicitors’ appeal and held that the whole loss

was in fact attributable to Mr Gabriel's commercial misjudgements. Damages were thus reduced to nil.

The Supreme Court unanimously dismissed the appeal.

Key Points

The Court found that the evidence sufficiently showed that the value of the property would not have been enhanced by the expenditure of £200,000 on its development. It was therefore not viable in any event. The Court applied the principles set out in the SAAMCO case and took the opportunity to clear up a number of misapprehensions which it felt were created as a result of a tendency to overlook two fundamental aspects of the reasoning in that case, namely; (i) where the contribution of the Defendant is to supply part only of the material which the client will take into account in making its own decision on the basis of a broader assessment of the risks, the Defendant has no legal responsibility for this decision; and (ii) the principle has nothing to do with the causation of a loss as that expression is usually understood in the law. The "SAAMCO cap" is simply a tool for giving effect to the distinction between: (i) loss flowing from the fact that as a result of the Defendant's negligence the information was wrong and (ii) loss flowing from the decision to enter into the transaction at all.

It was clear in the BPE case that the solicitor had simply been engaged to draw up the documentation required to record the agreement and give it legal effect. He had not been engaged to advise on the decision to enter into the loan.

The cases of *Bristol & West Building Society –v- Steggle Palmer* and *Portman Building Society –v- Bevan Ashford (A Firm)* had established an exception to the first proposition set out above. In those cases the Court was willing to allow the lender to recover the entire sum advanced as the information which the solicitor failed to draw to their attention would either have shown that the transaction was fraudulent or unviable, or the information was otherwise fundamental to the decision to proceed. These cases have now been overturned.

The Supreme Court also confirmed the Court of Appeal's treatment of the burden of proof, that is, that it is for the Claimant to establish that he has suffered loss and also to establish that the loss fell within the scope of the duty he was owed.

It was clear that the solicitor in the BPE case did not assume responsibility for Mr Gabriel's decision to lend the money. The solicitor was only responsible for leading Mr Gabriel to believe that the funds would be applied against the development costs of the project. The question therefore was what, if any, loss was attributable to that information being wrong. If it had been correct, Mr Gabriel would still have lost his money, because the expenditure of £200,000 would not have enhanced the value of the property. None of the loss which Mr Gabriel suffered was within the scope of the solicitor's duty. It arose from commercial misjudgements, which were no concern of his.

Implications

This decision will in practical terms limit the circumstances in which a professional will be responsible for entirety of a client's loss flowing from the decision to enter into a transaction. Only in those cases where the advisor is specifically retained to essentially make the decision for the client will there be the potential to recover the entire sums advanced. Even where an advisor fails to inform the client of something crucial to the decision or information which would have revealed a transaction to be fraudulent or unviable from the outset, the advisor will not

be liable for all of the losses flowing from the decision unless he or she has assumed overall responsibility for that decision.

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