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MEDIA RELEASE

(Issued on behalf of Rosling King LLP)

HIGH COURT TEST CASE RULING A CRUCIAL PRECEDENT IN COMMERCIAL MORTGAGE-BACKED SECURITIES MARKET

LONDON: September 30, 2014. The High Court in London today issued a judgment against Colliers International (UK) plc over its negligent valuation of a commercial property in a test case that will have major implications for the commercial mortgage-backed securities (CMBS) market.

Rosling King LLP were legal advisers in the case brought by Titan Europe 2006-3 plc against Colliers following its valuation of a commercial property in Germany. The building lost nearly 90% of its stated value when the occupants, German mail order company Quelle, became insolvent and vacated the property.

Colliers valued the property in December 2005 at " 135m. Given the valuation, Credit Suisse advanced a loan of " 110m, the bulk of which was subsequently securitised and transferred to Titan, the Issuer, in a securitisation of circa " 1bn. The case was progressed by Hatfield Philips International, the special servicer of the loan.

In his judgment Blair J. concluded that the true value of the property as at December 2005 was " 103m. Colliers had therefore negligently overvalued the property by " 32m and this is the figure that Colliers are required to pay to Titan, together with interest and costs. Rosling King's barristers were Christopher Symons QC and Peter De Verneuil Smith, both of 3 Verulam Buildings.

Rosling King partner James Walton, who advised Hatfield Philips throughout the case, said: "This was an extremely complex case that has taken five years to resolve and this landmark judgment has wide implications for other issuers and special servicers in the CMBS market; the decision will probably result in the pursuit of other claims.

"The case hinged on two key issues . firstly did Colliers negligently overvalue the property and secondly had Titan suffered a loss so as to entitle it to pursue a claim against Colliers? Mr. Justice Blair ruled in favour of Titan on both counts.

"This is the first time that a UK Court has been faced with a claim brought against a negligent property valuer where the loan advanced by the original lender has been securitised. As a result of this judgment it is very likely we will see a greater appetite to recover losses suffered during the collapse of the commercial property market across Europe during the recession. There is a perception that these claims may now be time-barred but that perception is wrong.

"This was an extremely complex case mainly due to there being no precedent case law to look to for guidance. The CMBS market was in its infancy during the recession of the 1990s and that is the reason why a case of this type has only just emerged now.

"Our strategy was to inform the court as thoroughly as possible on real estate valuation methodology and the many variables that lie within that. By doing that the Judge was armed with all the necessary information and a valuation toolkit which enabled him to reach his own measured conclusion as to valuation. This strategy has paid off in spades.+

Hatfield Philips has demonstrated that it was very much in the interests of the noteholders to pursue this claim and the determination they have shown has achieved a landmark victory for our client.

Blair Lewis, Chief Executive Officer of Hatfield Philips said "We are very pleased with the ruling, not just because of the positive impact it will have for the noteholders of Titan 2006-3 directly, but also for the precedent it sets for other claims of this nature. Hatfield Philips is proud to have once again demonstrated its commitment to pursuing all possible avenues available to recover monies due to our clients. We couldn't be happier with the work done by Rosling King and 3 Verulam Buildings in achieving this successful outcome."

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Further information

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Notes to editors

Key issues: Titan Europe 2006-3 plc v Colliers International (UK) Plc.

Did Colliers negligently overvalue the Property?

Justice Blair commented that Colliers failed to give sufficient weight to the fact that the property was likely to attract poor demand because it was very large, old, and built to the needs of Quelle's particular business. Although I have concluded that it was open to a reasonably competent valuer in December 2005 to conclude that it was probable that Quelle would stay in the property after the expiry of the lease, a reasonably competent valuer would have concluded that there was a real risk that it might leave, and Colliers did not give sufficient weight to the attendant problems which this building would then pose, in particular the difficulties that ought to have been foreseen in attracting a single occupier, the difficulties in re-letting the whole property, and the costs of sub-division.

Had Titan suffered a loss so as to entitle it to pursue a claim against Colliers?

Colliers had argued that the securitisation was structured in such a way as to confer a right of action upon the individual noteholders, and thus, if Colliers had acted negligently, it was the noteholders who have suffered a loss and the noteholders who should bring the claim. Justice Blair disagreed, concluding that Titan had suffered a loss, that it was the correct claimant and that it was therefore entitled to bring the claim. He said: "I do not think that it is right to conclude from the transaction as a whole that Titan suffered no loss. I agree with Titan that ... it suffered a loss the moment it purchased the [loan]. The fact that the securities were issued by Titan on a non-recourse basis is irrelevant, and falls within the principle of res inter alios acta [i.e. a thing done between others], because the non-recourse nature of the notes issue arises out of contractual arrangements with third parties."

About Rosling King LLP

Rosling King is a law firm based in the heart of the City of London. Recognised primarily for its commercial work on behalf of major blue chip financial institutions, the firm has a strong results driven team of formidable litigators and finance lawyers. Commerciality is in the firm's DNA; the firm sees itself as an extension of its clients' businesses and puts together the team needed to achieve their business solution. Its lawyers give painstaking attention to detail, leaving no stone unturned to achieve the right result. The firm is agile, versatile and imaginative . always pushing out the boundaries to achieve the best goal.

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