

# Titan judgement will have mighty CMBS implications

More cases set to follow ruling that SPV issuer could sue valuer, reports Jane Roberts

**R**everberations from the “groundbreaking” Titan v Colliers judgement recently handed down in London’s High Court are already being felt. The case is likely to encourage other negligence claims over securitisations that went sour, and will prompt changes to the provisions included in new, ‘CMBS 2.0’ deals, experts say.

Law firm Berwin Leighton Paisner, which has advised on many securitisations, says the judgement “was groundbreaking, as the first case in which an issuer has been held to have legal standing for a negligence claim against a valuer, although it was the originator [Credit Suisse] that instructed the valuer and obtained the valuation report”.

The judge in Titan made two key rulings: that Colliers negligently over-valued the Quelle HQ in Nuremberg, Germany, which was security for a €110m loan sold to Titan, by €32m; and that Colliers International’s duty of care extends beyond the lender to the issuer, with special-purpose vehicle issuer Titan Europe 2006-3 having suffered a loss.

The decision demolishes the argument that issuers are just a conduit for investor-noteholders to invest in property and that the issuer has not suffered any loss.

James Walton, the Rosling King partner who advised servicer Hatfield Philips International in running the issuer’s case, says: “This will certainly have an impact on other claims being brought, and may be brought in the future, by issuers of CMBS.”

It means that if CMBS deals crystallize losses – likely in those undertaken at the 2005-07 market peak – the issuer can sue if it thinks it can prove the losses were not just a result of falls in property values, but

## Quelle surprise about Colliers’ valuation

Colliers valued the 2.5m sq ft, bespoke Quelle HQ in Nuremberg, Germany (pictured) at €135m in December 2005. Mail order firm Quelle, the sole tenant, collapsed in June 2009 and JLL valued the empty property at €12.47m in January 2010, citing a €175m redevelopment needed to attract new tenants as the main reason for the big fall in value.

After the September 2014 judgement, Colliers International said: “We remain of the opinion that the property was correctly valued



at the time and are pursuing an appeal.”

The Quelle loan was part of the ill-fated Titan Europe 2006-3 CMBS, with most of the loans in that portfolio being distressed.

were partly down to negligently high valuations. “Where securitisations are under water, people should look back at valuations,” says BLP litigation partner Joanna Lampert.

### MORE CMBS CASES TO COME

Titan was the first negligence claim against a valuer in a CMBS structure, but others are lined up. Solveig Loretz of Solo & Partners, who was an independent CMBS expert in the Titan case, says the next is Windermere X v Warwick St. The issuer is bringing the case directly and it is due to

come to court next March. The law firm acting for the defendant is said to have been in court every day of the Titan case.

Behind Windermere X is Gemini (Eclipse 2006-3) v CBRE and Warwick St. The issuer is suing valuers CBRE and what was King Sturge, before its takeover by JLL.

Titan also highlights the controversial issue of valuers’ independence and the strain on client-valuer relationships in a hot market. The judge noted that Credit Suisse asked the valuer to stick as closely as possible to a €140m desk-top valuation.

“None of the documents in these cases envisage that the servicer or issuer would sue the professionals, resulting sometimes in potential ambiguity in the allocation of recoveries,” Loretz notes.

Walton says: “We will now see much clearer provisions being put into future CMBS documentation, emphasising the issuer’s right to bring a claim and special servicer’s obligations to investigate and pursue claims.” ■



Rosling King’s Walton (l) and Solo & Partners’ Loretz expect more CMBS negligence claims