

Dispute Resolution
Case Law Update
Rosling King LLP



Background

The Claimants, Mr Howard and Mrs Pate, brought a claim against the Bank of Scotland plc (t/a Halifax). In 2007, the Claimants were looking to purchase a house for sale for £310,000 (the "Property"). In August 2007, the Defendant's in-house valuers produced a report valuing the Property at £310,000 and stating that, upon completion of the anticipated renovations and refurbishment, it would later be valued at £380,000. The Claimants proceeded with purchasing the Property and obtained a mortgage for the sum of £248,999 from the Defendant.

The fixed term on the mortgage expired around July 2012 and the property was subsequently re-valued by a different valuer for the sum of £250,000. On this basis, the Defendant refused to grant a re-mortgage. Whilst a sale at this price would have covered the mortgage, the Claimants submitted that this left them in a position where they were unable to remortgage or resell the property as this would result in a significant loss of money. On or about 3 August 2012, after several complaints to the Defendant, the Claimants confirmed that they would no longer be making any further payments towards their mortgage.

As the mortgage had fallen into arrears, the Defendant commenced proceedings to repossess the Property around April 2013. The Court granted an Order for possession. During the possession hearing, the Defendant made the submission that no loss had actually been suffered by the Claimants as the Property was yet to be sold. The Defendant took voluntary possession of the Property around February 2014 and later sold it for £150,000 leaving a shortfall of £120,000 on the mortgage.

The Claimants issued a claim against the lender on 9 June 2019. They confirmed the delay was due to them believing that, despite a number of data requests, the Defendant was still withholding significant information from them and that it had taken a considerable amount of time for them to raise the funds to pay the issue fee. The claim was based on two primary arguments:

- 1 The lender negligently overvalued the Property; and
- 2 The lender negligently misrepresented the nature of the mortgage.

The Commercial Court in Birmingham dismissed the negligent misrepresentation claim as it was held by HHJ Worster that this could not be proved. However, the Court did proceed to examine application of the Limitation Act on the lender's alleged negligent overvaluation. Generally, the limitation period to bring a claim is the later of six years from the date of damage, or three years from the date the claimant knows or ought to have known of the damage (date of knowledge) under s14A Limitation Act 1980. The Claimants submitted the following:

- 1 The actual damage was suffered around April 2014 upon sale of the property; alternatively
- 2 Their date of knowledge for the purposes of s14A of the Limitation Act was March 2017; and

- 3 The Defendant had deliberately concealed facts important to the case and to assessing damage.

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Decision

In support of (1) above, the Claimants referred to the case of *Nykredit Mortgage Bank Ltd v Edward Erdman Group Ltd [1997]* to assist their submission that the Property was valued at £250,000 in 2012 and therefore held enough value to repay the mortgage at this point; this meant that actual loss was not suffered until April 2014 when the Property was sold for £150,000. HHJ Worster, however, held that the Claimants suffered an actual loss in 2007 as the Property was purchased based upon an overvaluation by the lender. He confirmed that the valuation in 2012 was not the issue in question.

In relation to (2), the Claimants argued that they had received the DSAR pack from the Defendant, in March 2017 therefore the 3 year timeframe began running from this date as this provided them with the “knowledge” to bring the claim. However, the Court held that it was plain from the facts pleaded in 2013 (during the Defendant’s repossession proceedings) that the Claimants were aware the Property had been overvalued. As the Property had then been sold in April 2014 and the claim issued in 2019, even on the Claimant’s case, the claim was time-barred as they could not bring themselves within the 3 year timeframe under s14A of the Limitation Act.

Finally, the Claimants’ argument in (3) rested on s32(1)(b) of the Limitation Act 1980 which states that the period of limitation shall not begin to run until any information relating to the right of action that has been deliberately concealed from him by the defendant has been discovered. However, HHJ Worster held that this referred to a fact without which the cause of action would be incomplete, not just any relevant fact. The Court held that time would have begun running in April 2013 (when the Property was repossessed) or, at the latest, April 2014 when the Property was sold as there was sufficient information to bring a claim.

The Court concluded that the Defendants could not rely on the exceptions in s14A and s32(1)(b) of the Limitation Act therefore the claim was time barred, had no reasonable prospect of success and the application for summary judgment was granted to the Defendant.

Commentary

Whilst the judgment does sympathise with the Claimants’ position and indicates there may have been a claim for negligent overvaluation, HHJ Worster takes a robust stance towards the application of s14A of the Limitation Act 1980. He confirms that, in line with previous case law, the application of “knowledge” is not specific and broad knowledge will suffice. The Court confirmed that the Defendant’s actual loss was suffered upon the purchase of the Property, not the subsequent sale, despite a higher valuation having been obtained in 2012 showing the value of the security could repay the mortgage at that point. Finally, the Court held that, in order to rely on s32(1)(b) of the Limitation Act, the information withheld by a lender would need to result in the cause of action being incomplete..



It is also worth noting that the Defendants submitted that their claim should not be decided at the application hearing as there are a number of disputed facts in this case. The Court however held that, just because the facts are disputed, it does not mean the claim is unsuitable for summary judgment. So long as there is no real prospect of success, for example if a claim is time barred, then the outcome of the case is not aligned with how the disputed facts would have been determined. Subsequently, if lenders are looking to strike out a claim, it may be worth considering making such an application despite the number of contested facts or issues.

For further information, please contact [Georgina Squire](#) or the Partner with whom you usually deal.