

Dispute Resolution  
Case Law Update  
Rosling King LLP



### Background

LIV, a bridging lender provided four loans as part of a short-term bridging facility for the development of land. LIV had advanced the sum of £800,000 in relation to four properties over a period of 10 months.

LIV argued that it had suffered losses in relation to the four loans as a result of the payment of the loan monies out without EAD ensuring that they were secured by a first legal charge over the specific properties, which was contrary to the instructions provided by LIV.

LIV argued that it had incurred substantial losses as a result of borrower defaults and pursued a claim for breach of contract, negligence and breach of trust against EAD. LIV's summary judgment application focused on its claim for equitable compensation on the basis that it would provide more generous assessment of the losses than the SAAMCo principles would allow.

### The Decision – Summary judgment

The Court was satisfied that LIV had shown that EAD had no real prospect of successfully defending the claim in relation to two of the four loans and allowed summary judgment on those elements of the claim.

### The Decision – SAAMCo Cap

Whilst the Court did grant LIV's summary judgment application, it only did so in relation to two of the four loans as LIV were unable to establish causation and loss in relation to the other two loans as it was probable that LIV had already recovered more money than what was advanced and so no loss had been suffered in relation to those loans. On that basis, the Court allowed the claim in relation to the second and third loans amounting to the total sum of £250,000 plus interest.

More importantly, the Court only allowed damages in line with the SAAMCo principle rather than equitable compensation for breach of trust. Whilst LIV argued that it had relied on its solicitor at EAD to do "all of the legal work for the transaction" the Court did not uphold the suggestion that the solicitor was "expected to guide the whole decision-making process".

The Court held that under the principles of *Hughes-Holland v BPE Solicitors* [2018] AC 599, EAD had provided "information" rather than "advice" and had therefore limited its professional duties to LIV. On this basis, LIV's losses were limited to the SAAMCo losses falling within the scope of EAD's narrower duty to obtain a first charge and confirm that the charge had been obtained. The Court did not allow for equitable compensation which resulted from LIV entering into the transaction. This meant that LIV's damages were limited to the losses it had sustained in not obtaining the legal charges over the properties only.

### Commentary

This decision shows that the Court will use the SAAMCo principles to limit the recoverable damages in breach of trust by solicitor cases where the Claimant is unable to prove that the professional had not limited its professional duties to provide information only but rather had to provide information and advice.