



### Which party should bring a claim in relation to securitised loans

The Court has given guidance on which party is the proper claimant in a claim arising out of a complex securitised loan transaction. The High Court has made a landmark decision concerning negligence claims involving securitised loans in *Titan Europe 2006-3 Plc v Colliers International UK Plc*. This may pave the way for further similar claims.

#### Facts

Credit Suisse advanced a loan of €110m, secured against a German property which had been valued at €135m in 2005 by Colliers International UK Plc. Colliers' valuation certificate provided that it could be relied upon by, amongst others, any buyer of the loan.

An SPV, Titan Europe 2006-3 Plc, was then incorporated, and issued floating rate notes on a non-recourse basis to subscribers. Titan used the resulting funds to purchase 18 loans from Credit Suisse, including the loan advanced in reliance on the Colliers valuation. The parties entered into an agreed priority of payments determining how money should be distributed (the "payments waterfall"). Titan was obliged to apply any recoveries under the loans to the payments waterfall.

Following a default, the German property was sold in 2014 for €22.5m, some €112.5m less than Colliers' 2005 valuation. Titan issued proceedings against Colliers, claiming negligent overvaluation.

#### Questions

Key issues for the Court were:

- Was the SPV the correct Claimant, as opposed to the subscribers?
- Was the valuation negligent?

#### Decision

Colliers' valuation was held to be negligent.

Titan was held to be the correct Claimant on the basis that:

- A cause of action in tort accrues when damage is suffered. Titan suffered loss the moment it purchased the loan from Credit Suisse, by acquiring a chose in action worth less than the price paid for it.
- Titan was – unlike the subscribers - contractually obliged to distribute any sums received in the claim to the subscribers, in

accordance with the payments waterfall. In the absence of such a contractual obligation, it would have been insufficient for Titan to have undertaken to distribute any recovery to subscribers.

- Whilst the subscribers had suffered a loss, because of the number of loans and properties involved they were unlikely to be able to prove sufficient reliance on the Colliers valuation to bring a claim.
- It was irrelevant that Titan had received funds from subscribers to buy the loans, and that the securities were issued on a non-recourse basis.

#### Comment

It was emphasised that the High Court's decision turns on the facts of the case. In claims involving such complex financial transactions, much will depend on the contractual terms in question. The central issues to consider are whether:

- A contractual structure allocates the bringing of a claim to a particular party;
- That party brings the claim, in accordance with any conditions for doing so; and
- The claim proceeds will be dealt with in accordance with contractual requirements.

This is the first decision made in respect of a valuer negligence claim in such circumstances. As such, it will be closely watched by the market, and potentially opens the way for further negligence claims involving securitised loans.

Colliers have sought leave to appeal the decision to the Court of Appeal.

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