Bratt v Jones [2025] EWCA Civ 562

Q: "*What does a claimant have to prove to show that a valuer was negligent?*"
A: "*Exactly what you always thought had to be proven. But maybe that's wrong.*"

1. In *Bratt v Jones*, the Court of Appeal has confirmed an orthodox interpretation of the law of valuers' negligence, namely that to prove negligence it is for a claimant to show that (i) the valuation falls outside the bracket of reasonable valuations, and (ii) the valuer has been negligent (i.e. breached their duty of care applying standard *Bolam* principles).

2. The case is worth reading for three reasons.

3. First, the Claimant argued that once it has been shown that the valuation falls outside the bracket this creates an evidential burden on the valuer to show that they have not been negligent. This was rejected. The Court held that the burden of proving negligence remains on the Claimant.

4. It is suggested that this must be the correct outcome. The Claimant's essential point was that if the valuation was outside the relevant bracket, then this was evidence that something had gone wrong with the valuation and so was evidence of negligence. The impermissible step, however, was to say that this reversed the burden of proof such that the valuer had to disprove their negligence.

5. In fact, the correct approach is to acknowledge that "*if a valuer's figure falls outside the bracket that may be an indication that the valuer has been negligent",* such that in many cases a claimant who shows that the valuation is outside the bracket will be pushing at an open door in persuading a Court of the valuer's negligence. But it is still for the claimant to walk through that open door by pleading and then proving that *"in some respect the valuation was carried out other than in accordance with the practices regarded as acceptable by a respectable body of opinion within the profession.*"

6. Secondly, the Court reiterated that the size of the bracket is a question of fact and not of law. Expert evidence will need to be called on this issue in the absence of agreement.

7. Thirdly, and perhaps most interestingly, in *obiter* comments the Court of Appeal acknowledged that it was very arguable that there was a problem with the orthodox approach (i.e. of requiring the valuation to fall outside of the bracket before a finding of negligence can be reached).

8. That discussion follows observations made by Lord Hoffman in *SAAMCo* and *Lion Nathan*. The problem can be illustrated by an example: imagine a valuer makes a clear error (e.g. of calculation) that reduces their valuation by £50,000. Assume also that the claimant would have been better off if the error had not been made. Why is the valuer exonerated, and the claimant left without a remedy, merely because the valuer's overall total falls within the bracket?

9. It is clear from the Judgment that Sir Geoffrey Vos, Lord Justice Baker and Lord Justice Snowden had very considerable sympathy with this argument. They held, however, that this is a point that needs to be appealed to the Supreme Court.

10. And finally, legal updates such as this one very often make the outcome of a case or an appeal appear obvious. It is, of course, part of the Judge's skill in writing the judgment to lead the reader from the facts, through the law to the (obvious!) conclusion that the Judge has reached. It is part and parcel of preparing a legal update such as this one that much of the nuance is stripped away in favour of brevity. That process of refinement is often, although not always, a little unfair to the losing party. Consider Mr Bratt's position in this case as an example of the genre and ask the question, "*wouldn't most litigants in his position have wanted to appeal?*"

11. Mr Jones was a valuer instructed by parties to an option agreement to act as an expert in the determination of the open market value of a piece of development land near Banbury. The parties had vastly different views as to the proper valuation. Mr Bratt (who was the seller) argued that the Mr Jones' figure was too low, outside the reasonable range, and had caused him loss. Mr Bratt contended that the property was worth about £7m - £8.6m, whereas Mr Jones had valued the site at £4.075m.

12. At trial – and adding insult to injury - the Judge agreed that the valuation was low and that the proper valuation was £4,746,860. Unfortunately for Mr Bratt, the Judge concluded that the reasonable bracket was +/- 15% and Mr Jones' valuation was (only) 14.15% lower than the "correct" value. Mr Bratt's case could not, therefore, succeed given the Judge's findings.

13. It will surprise no one to learn that the appeal also dealt with challenges to (a) the Judge's valuation and (b) the size of the bracket. Both of those challenges were dismissed.

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