

• CASE WITH IMPLICATIONS FOR INVESTORS IN UK BUY-TO-LET PROPERTY

The recent case of *Scullion v Bank of Scotland plc* (trading as Colleys) has major implications for Channel Island investors purchasing buy-to-let property in the UK.

In the case, Mr Scullion bought a buy-to-let property valued for the lender by Colleys. In their report to the lender, Colleys estimated that the rent obtainable would be £2,000 per month, which was significantly higher than the rental income that Mr Scullion actually obtained (£1,050 per month).

Mr Scullion claimed that Colleys had over-valued both the rental and the capital value of the buy-to-let property and that as he had relied on their valuation when deciding to purchase his investment property, was entitled to damages.

Mr Scullion's central claim was that he had relied on Colley's report and that they owed him a duty of care.

At the trial Mr Scullion was awarded £72,234 for his losses caused by the negligently high rental value, but nothing for the high capital value, which the judge decided had not caused any loss to Mr Scullion.

Colleys appealed, and the Court of Appeal overruled the decision because the transaction was essentially "commercial in nature". There is a distinction between an investor in property and someone purchasing their own home.

The judge went on to say that "people who buy properties to let are, as a class, likely to be richer and more commercially astute than people who buy property to occupy. People who buy-to-let can therefore be regarded as more likely to obtain, and more likely to afford, an independent valuation or survey".

The Court held that a valuer instructed by the lender is primarily interested in the capital value of the investment property and not the rental value. The lender's "principal concern is that any loan is properly secured and can be repaid, if necessary, out of the proceeds of sale of the property".

Buy-to-let investors will be assumed to have carried out their own investigations as to how easy it would be to rent the property and the level of rent that could be expected from the investment. The lender's valuer owed them no duty of care and therefore, no damages are owed.

The judgment of the Court of Appeal is good news for surveyors who faced a number of claims from buy-to-let investors who had joined the rush to invest in property in the early 2000's and who have been exposed to crashing house prices.

Investors from the Channel Islands do need to be aware of this additional level of due diligence imposed on them when investing in the buy-to-let market, particularly where they are investing remotely or through a third party. An investor should carry out their own investigation as to the suitability of the property for investment purposes.

JULY 2011

**FOR MORE INFORMATION,
PLEASE CONTACT:**



MICHAEL MORRIS
SENIOR ASSOCIATE
t: +44 (0)1481 734263
e: michael.morris@collascrill.com

Collas Crill **Guernsey**

Glategny Court, PO Box 140,
Glategny Esplanade, St Peter Port,
Guernsey, GY1 4EW

t: +44 (0) 1481 723191

f: +44 (0) 1481 711880

e: guernsey@collascrill.com

w: www.collascrill.com