

PRESS RELEASE

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LET THE BUYER-TO-LET BEWARE ...

Solicitor Peter Daniels, who is joint head of the property department at Chatham based Stephens & Son LLP, is concerned that a recent case relating to a distinction made by the Court between buyers of property to let and buyers of property to live in, which means that the buyers to let deserve less protection from the law than those buying property to live in.

The recent appeal case of *Scullion v Bank of Scotland plc (t/a Colleys) 2011* had a decision made in the High Court overturned in the Court of Appeal. The case relates to buyers of buy-to-let properties and a claim made by a buyer against a valuer, who was



instructed by the lender to prepare a valuation of the property, which also included valuing the rental income the property could achieve.

The Court of Appeal held there were important distinctions to be made between valuations for buy-to-let purposes and those for 'home buyers'.

Astonishingly, in Daniels' view, the court concluded that those buying properties to let were less "deserving of protection by the common law against the risk of negligence than those buying to occupy as their residence".

In the *Scullion v Bank of Scotland plc* case the High Court decided that in the context of a residential buy-to-let property, a valuer was liable to the buyer for a negligent valuation provided to the lender, in this case the Bank. This follows a line of authorities that has

been applied for many years in lender's valuations for loans in respect of domestic properties where the borrower is occupying the property as a home.

The Court of Appeal has overturned the decision even though the court agreed that the valuer had been negligent and the claimant had relied upon the valuer's report (along with other advice) when deciding to proceed to purchase.

To many legal commentators' surprise, the Court of Appeal held that the claimant had not established

- foresee-ability of damage,
- or a sufficient degree of proximity between himself and the valuer, and
- the claimant did not show that it would be "fair, just and reasonable" to impose (on the valuer) a duty of care to him.

The Court of Appeal said its conclusion was not one it reached with any satisfaction, but even given that comment Peter Daniels still cannot see that its conclusion is right and says it creates a very odd situation.

"What it means is that if I buy a property to live in and rely on the lender's valuation for the mortgage without obtaining my own, then apparently I am deserving of the court's protection if the valuer is negligent. This applies even though lenders always make it clear that the valuation is for the benefit of the lender and not the borrower (and solicitors advise their clients to have their own valuation for that reason - and preferably a proper condition survey as well)."

"However, if I purchase a buy-to-let property, perhaps at the same time, and my lender uses the same valuer who is equally negligent on that valuation, I have no claim (and I do not *deserve* to have a claim although I am the same person!)."

Buyers of buy-to-let properties must take heed – not only should they have their own valuation to check rental and property values (as well as a proper condition survey) but also if the Courts regard them as being less deserving in this case, the Courts may hold the same view where other professionals - acting for the lender alone - have also been negligent (solicitors come to mind!).

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And finally, if buy-to-let buyers do not deserve protection then this acts a reminder that buyers of commercial premises are in the same boat. Perhaps this is not as unfair, as the law looks to give consumer's greater protection than businesses. Indeed, many commercial borrowers are experienced in what they are doing and know what advice they should look for, but not all are and may not appreciate that the Courts may regard them as less deserving of protection.

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