



Court Dismisses Appraiser Negligence Claim Finds Appraisal Valuation Was Within the Reasonable Range

The BC Supreme Court's recent decision in *RBC v Westech Appraisal Services Ltd. et al.* 2018 BCSC 473 reaffirms some important aspects of appraisal negligence decisions, including the need to identify clear errors and departures from professional guidelines in the underwriting appraisal in order to be successful in appraisal negligence claims. The case also is a reminder of the importance for expert reports supporting the negligence claim to be thorough, accurate, clear and completed by professionals with proper experience and training.

The action concerned an appraisal by the Defendants for a large rural/residential estate property in Abbotsford. The Plaintiff RBC commissioned the Defendants to produce the appraisal in 2007 for the purposes of second mortgage financing. The first mortgage, from Mount Lehman Credit Union, was for \$1.45 million.

The Defendants appraised the property at \$2.5 - \$3.0 million and, on the strength of that appraisal, RBC loaned the property owners \$700,000 to be secured by a second mortgage on the property.

The borrowers made the required payments for two years, and then defaulted on RBC's mortgage as well as the Credit Union's first mortgage. Both foreclosed, and the property was sold out of foreclosure by the Credit Union for \$1.35 million in 2013. As the sale proceeds did not cover the amount owed to the Credit Union, RBC received nothing and so suffered a loss of some \$720,000.

RBC sued the underwriting appraisers for negligence and breach of contract, alleging that they had misstated the value of the property and caused RBC's loss. RBC obtained a retro-appraisal putting the value at the time of the underwriting appraisal at \$2.0 million. Notwithstanding the alleged overvaluation by up to \$1.0 million, RBC was unsuccessful in its lawsuit against the appraisers, as the Court found that the appraisers had not fallen below the standard of reasonable care and were therefore not liable for RBC's loss.

The most important points affirmed by this decision are the following:

1. It is not sufficient for the plaintiff lender simply to show that the underwriting appraisal overvalued the property. Rather, the plaintiff must demonstrate that the appraiser made a mistake that caused or significantly contributed to the overvaluation.
2. In a similar vein, appraising real property is not an exact science. Rather, there is a range of values that an appraiser might reasonably reach. For the plaintiff to succeed, the value reached in the underwriting appraisal must be below the reasonable range of values that might have been reached at that time.



3. The professional standards for appraisers are very important in these cases as they provide a framework against which an appraiser's work can be judged. A plaintiff must be careful to identify and focus on substantive and important breaches of standards, and not simply technical breaches that do not appear to have substantial effect on value.
4. These cases frequently become "battles of experts" where each side relies heavily on an experienced appraiser who produces a report (or reports) and testifies as a witness at trial. The experience and training of these experts, as well as the thoroughness, accuracy and clarity of their reports and testimony, are central to the determination of these cases.

An ounce of prevention is worth a pound of cure. Appraiser negligence claims carry risk and it is important to delve beyond what might be appear on its face to be a significant overvaluation by the underwriting appraiser.

Please contact us should you wish to discuss the implications of this decision in more detail.



Tyson McNeil-Hay
Associate
tmcneilhay@fultonco.com
250.851.3036



Dan Carroll
Partner
dcarroll@fultonco.com
250.851.2335