No, it is not really worth it!

Earlier this year, the Court of Appeal handed down judgment in *Bratt v Jones [2025] EWCA Civ 562*, endorsing the findings of the High Court.

Background

In April 2024, we considered the High Court's judgment in Bratt v Jones. For a full background, we refer to our earlier article at this link. In summary, the claimant, Mr Bratt, owned of a piece of farmland ("the Site") in respect of which he had entered into an option agreement with a developer ("D") under which D was entitled to purchase the Site for 90% of the market value ("the Option"). On D exercising the Option, the market value was to be determined, if not agreed, by a third party valuer.

When D exercised the Option, the Defendant, Mr Jones, was jointly appointed to determine the value pursuant to the option agreement. He valued the Site at £4.075m. After planning permission was granted, D purchased the Site based upon Mr Jones' valuation.

Mr Bratt did not agree with Mr Jones's valuation which he considered was significantly undervalue. Hence, he brought proceedings against Mr Jones.

The High Court Judgment

In the first instance, Mr Bratt pleaded, essentially, that the proper methodology for the Court to apply was to, first, conduct its own valuation in order to determine the correct value of the property and, second, determine whether the valuer's valuation fell outside an acceptable margin of error (contented by Mr Bratt, to be 10%). If both requirements were met, he argued, this in itself was sufficient evidence to enable the Court to conclude that the valuer had acted negligently.

The judge rejected this argument. Although, the Court does make a decision on the correct value and decide whether the valuation conducted falls within an appropriate margin (which is to be determined by the facts), this is only one leg of the test. In isolation, this is not sufficient to establish negligence. If the valuation is within the margin of error, it precludes the Court from making a finding of negligence, but it does not mean that negligence can automatically be established solely because the valuation turned out to be outside the appropriate margin. Rather, the claimant is then required to establish negligence by application of the Bolam test, i.e whether the defendant has acted in accordance with practices which are regarded as acceptable by a respectable body of opinion in his profession.

The Court of Appeal Judgment

At second instance, Mr Bratt advanced two grounds of appeal on the law:

1. That the judge had applied the wrong legal test to determine liability. In the event the valuation falls outside the margin of error, he argued, this creates a presumption of negligence, and the burden of proof shifts to the valuer to prove that they did not act negligently.
2. That the judge was wrong to treat the bracket in respect of the margin of error as a matter of facts. Rather, Mr Bratt said, the proposed bracket of ±10% is established in law and the defendant must demonstrate extraordinary circumstances to persuade the Court to depart from it.

On the first ground, the Court of Appeal relied on *Merivale Moore plc v. Strutt & Parker [2000] PNLR 498,* endorsing the observation by Buxton LJ that the fact "*that a valuer's figure falls outside the bracket may be an indication that the valuer has been negligent. It cannot, however, reverse the legal burden of proving negligence."*

The Court of Appeal further remarked that the reference to an evidential burden in this context is not particularly helpful. The Court of Appeal explained: *"an evidential burden generally describes the obligation of a party to adduce sufficient credible evidence which, if left uncontradicted and unexplained, could be accepted by the trier of fact as proof of the issue in question."* However, the question as to whether a valuer has breached the Bolam principles is not a simple question of fact. There may be various reasons why the estimate of the valuer falls outside the bracket. By way of example, the valuer might reasonably have relied on information provided to him, which turned out to be inaccurate.

On the second ground, Mr Bratt relied on, inter alia, the Court of Appeal judgment in *Titan Europe 2006-3 plc v. Colliers International UK plc [2015] EWCA Civ 1083, [2016] PNLR 7,* in which Blair J found*:*

"The question of bracket is ultimately a question of law for the court's determination assisted by the views of expert valuers as to the degree of difficulty of the valuation under consideration. The case law suggests that for a standard residential property, the margin of error may be as low as plus or minus 5 per cent; for a valuation of a one-off property, the margin of error will usually be plus or minus 10 per cent; if there are exceptional features of the property in question, the margin of error could be plus or minus 15 per cent, or even higher in an appropriate case."

Again, Mr Bratt's case was that the margin of error is ±10%, and that it is for the defendant to establish exceptional features to justify a higher margin. He argued that the judge had been wrong to apply the increased 15% margin of error in circumstances where the Defendant's expert, Mr Buckingham, had accepted in cross-examination that there was nothing exceptional about the valuation of the Site.

Nevertheless, the Court of Appeal found, the judge had been entitled to apply the increased margin. Whilst the property may not have been exceptional, Mr Buckingham had relied on a number of factors to explain why he thought the margin at 15% was appropriate, and Mr Bratt had not adduced evidence to the contrary. Therefore, the appeal was rejected.

Finally, Mr Bratt advanced appeals of facts concerning the methodology applied in assessing the proper value. Unsurprisingly, those grounds of appeal were also rejected.

CPB Comment

The Court of Appeal's judgment is conventional and confirms that the Bolam test remains live and well in valuers' negligence cases. It is broadly recognised that valuing property is not an exact science, and it would have been surprising if the Court had applied a presumption of negligence to a field that is characterised by requiring the exercising of judgment. The mere fact that professional valuations vary may suggest that something has gone awry, but is not in itself evidence that this was the fault of the valuer.

Mr Bratt's case sought to rely on the *res ipsa loquitur* principle – that the Court should find that facts speak for themselves and conclude that the damage could not have occurred without negligence. This is a principle that is narrowly applied by the Courts, and generally confined to circumstances where 1) the accident in its nature would not likely happen without negligence; 2) the cause is unknown; but 3) whatever the cause was, it would have been under the exclusive management of the defendant. It is mostly applied in personal injury cases where the Claimant has no way of identifying the cause. These requirements are unlikely to be fulfilled in professional negligence cases.

As such, the case illustrates that the production of good expert evidence remains a key procedural requirement in professional negligence cases. Reliance on academic arguments does not negate the requirement to adduce sound evidence to assist the Court.

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Any questions

If you have any questions regarding the issues raised in this article, please get in touch with Dean or Lisbeth.

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