Valuation is an art not a science

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A DECISION in the Supreme Court of NSW has reiterated the point that the practise of valuation is an art, not a science and is not simply a 'tick-a-box' driven process, lawyers said.

The Supreme Court of NSW has ruled in favour of John Virtue Valuers, after Provident Capital Limited sued the valuer, seeking damages from JVV due to an allegedly negligent valuation of a development site in Erskineville in Sydney, New South Wales.

DLA Piper Partner James Berg and senior associate James Morse said the decision found a valuer must adapt and evolve the valuation method to suit the facts, matters and circumstances that give rise to the provision of the valuation – especially the instructions given by a lender-client.

"The professional valuer must exercise his/her mind and bring all relevant skill and experience to bear.

"In this instance, JVV applied its expertise in determining that a direct comparison methodology was not appropriate and noted as such in the valuation report. JVV then proceeded to value the property using a gross realisation, hypothetical development methodology and included a number of warnings to Provident Capital regarding the relevance of the presale contracts.

"Given the numerous bases upon which valuations can be undertaken and provided, close attention must be given to the instructions that underlie a valuation request. The impact of market fluctuations also means that the time at which a valuation is provided (and the information that is reasonably available at that time) is a critical consideration. Likewise, the content of parts of the valuation must be viewed in the context of the entire valuation," Berg and Morse said.

Provident Capital is appealing the court decision, which found JVV acted reasonable, notwithstanding the potential for some variance on those issues.

"Further, reliance on the valuation by the plaintiff lender, Provident Capital Limited, was considered unreasonable in circumstances where the valuation was based on an assumption that Provident Capital knew (or ought to have known) it was actually or potentially incorrect.

"That assumption related to the bona fides of pre-sale contracts for the proposed development. Relevantly, on numerous occasions in the valuation report, JVV had 'warned' Provident Capital that the assessment of value was conditional upon the pre-sale contracts being determined available and bona fide," they continued.

In December 2004, JVV valued the property at $12 million. In providing that assessment of value, JVV:

· utilised a gross realisation, hypothetical development/ feasibility methodology as the only valuation methodology

· explained that following a search of sales evidence, it was unable to identify any useful sales for the purposes of undertaking an assessment by direct comparison

Provident Capital loaned funds secured by the property. However, the borrower defaulted. And following default in October 2005, Provident Capital requested that JVV provide a further valuation of the property.

At that time JVV assessed the value of the property at between $6.25 million and $7 million. However, it did so on the basis that the presale contracts were no longer available for consideration, thereby significantly increasing the risk and cost of the proposed development.

In addition, JVV used a direct comparison methodology as one of the methodologies in the second valuation.

Berg and Morse said Provident Capital's expert valuer criticised JVV's first valuation on the basis that the direct comparison methodology should have been used as a primary valuation methodology in the circumstances.

"Thereafter, a gross realisation, hypothetical development/feasibility methodology should have been used as a 'check' for the method of valuation. Provident Capital also asserted that the significant difference between JVV's two valuations was enough to establish negligence.

"JVV denied negligence and submitted that the second valuation was irrelevant yet, in any event, there was no inconsistency between the two valuations such that no adverse inference could be drawn," they said.

"The court found that the specific valuer was entitled to exercise his professional opinion/ discretion by adopting what he considered to be the appropriate methodology in circumstances where, it appeared to the court, that he could adequately justify why (for example) he did not have regard to the direct comparison methodology.

"In this instance, the evidence was that there were no relevantly comparable sales within the previous 12 to 18 months which would have been of assistance. The evidence from the specific valuer was that if he were to have regard to dated sales, the process of adjustment would make the assessment of value less reliable.

Against that background, although JVV had adopted a different approach to that proposed by the relevant experts, the difference was 'not significant'.

The court also found JVV did not cause Provident Capital's loss as the valuation was accurate.

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