



A Duty of Care?

On 21st October this year the Court of Appeal handed down judgment in the case of Silven Properties Ltd –v- Royal bank of Scotland Plc. The Judgment is an important one and examines the duty of care owed by Banks and Receivers when selling mortgaged property.

The Facts

The Claimants,. Silven Properties, had mortgaged various properties to the Bank to secure a debt. They defaulted on the payments due, and the Bank appointed Receivers to secure repayment. Between them, the Bank and the Receivers sold all the properties. The mortgages provided that any Receivers appointed would act as agents for Silven, the mortgagors.

Silven subsequently claimed damages against the Bank and the Receivers alleging that in breach of duty they had sold the mortgaged properties at an undervalue. They claimed that the Receivers and bank were under a duty not to sell the properties when they did. Instead, they should have pursued existing applications for planning permission to develop them, and completed negotiations to let vacant properties, so as to achieve a better price.

The Judgment

The Court of Appeal decided that:

- Mortgagees can exercise their power of sale at any time, although have a duty to take reasonable precautions to obtain a fair market price.
- Mortgagees are however under no obligation to improve any property or take steps to increase the current value.
- The primary duty of the Receiver was to secure repayment of the debt to the Mortgagee. Even though the Receivers were Agents for the Mortgagors, they also had no obligation to make property more attractive before marketing or to take pre-contract steps to increase the value.

This Newsflash is issued by the Leisure and Property Management Law Group should you have any queries arising from the new changes please contact

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