

Manchester Building Society v Grant Thornton UK LLP

The Court of Appeal has set out six steps to be considered when applying the 'SAAMCo' scope of duty principle in auditors' negligence cases.

08 February 2019

The Court of Appeal has set out six steps to be considered when applying the 'SAAMCo' scope of duty principle in auditors' negligence cases:

1. It is first necessary to consider whether it is an 'advice' or an 'information' case.
2. It will be an 'advice' case if it can be shown that it has been 'left to the adviser to consider what matters should be taken into account in deciding whether to enter into the transaction' and the adviser is 'responsible for guiding the whole decision making process'.
3. If it is an 'advice' case, then the negligent advisor will have assumed responsibility for the decision to enter the transaction and will be responsible for all the foreseeable financial consequences of entering into the transaction.
4. If it is not an 'advice' case, then it is an 'information' case and responsibility will not have been assumed for the decision to enter into the transaction.
5. If it is an 'information' case, the negligent auditor will only be responsible for the foreseeable financial consequences of the advice and/or information being wrong.
6. The losses in information cases would therefore be assessed on the basis of what the position would have been had the advice and/or information been correct. It is only losses which would not have been suffered in such circumstances that are recoverable.

In this case, Grant Thornton incorrectly advised Manchester Building Society concerning the accounting treatment of long-term interest rate swaps and lifetime mortgages. When Grant Thornton's negligence was identified, Manchester Building Society had to break the long term swaps at a cost of £32.7 million, due to the negative market to market value of the swaps at the time.

The main question which the Court of Appeal was asked to determine was whether Grant Thornton was liable for the market to market cost of breaking the swaps. The trial judge held that Grant Thornton was not liable as it had not assumed responsibility for such losses. The Court of Appeal disagreed with the trial judge's analysis and held that the judge should have considered whether it was an 'advice' or 'information' case.

The Court of Appeal held that this was an 'information' case and therefore Grant Thornton was only responsible for the foreseeable financial consequences of the advice being wrong. Manchester Building Society therefore had to show that that the market to market cost would not have been suffered if the advice had been correct. Manchester Building Society's case was that if the advice had been correct they would have held the swaps rather than breaking them when the negligent advice came to light. At the time of trial, the value of the swaps had declined further and Manchester Building Society failed to demonstrate that it would have undertaken steps to offset the losses on the swaps. Therefore Manchester Building Society failed to establish that it would have been better off if the advice had been correct and the claim failed.

The analysis set out by the Court of Appeal should make 'SAAMCo' easier to apply in financial negligence cases. This decision should be helpful to insurers of auditors and accountants, as it should enable, more accurate reserving and claims to be settled earlier as there is more certainty regarding the loss recoverable.

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