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Manchester Building Society v Grant Thornton

The Court of Appeal this week handed down its judgment in the case of *Manchester Building Society ("MBS") v Grant Thornton ("GT")*, dismissing MBS' appeal against a judgment of the Commercial Court. In a significant decision on the *SAAMCO* principle of assumption of responsibility, the Court of Appeal upheld the first instance decision of Teare J but for different reasons.

The claimant, MBS, had been negligently advised by the defendant, GT, that it could apply an accounting treatment (hedge accounting) to reduce the effect in its accounts of the volatility of long term interest rate swaps. In reliance upon that advice, MBS entered into the swaps. When, in 2013, GT advised MBS that it could not in fact apply hedge accounting, MBS closed out the swaps and incurred "mark-to-market" losses of £32.5 million (the "**MTM losses**"). GT accepted that its advice in relation to the hedge accounting was negligent.

Teare J in the Commercial Court concluded that GT, in advising MBS about the accounting treatment of its business activities, had not assumed responsibility for the financial consequences of those activities.

The Court of Appeal made the following key findings in respect of the MTM losses which were the subject of MBS' appeal:

1. The judge had erred in law in approaching the issue of liability on the basis of assumption of responsibility rather than considering whether this was an "information" or "advice" case. The correct approach, as confirmed by the Supreme Court in *Hughes-Holland v BPE Solicitors* is to consider whether a case is an "information" case or an "advice" case:
 - An "advice" case is where the adviser is responsible for guiding the whole decision making process. If it is an "advice" case, the negligent adviser will have assumed responsibility for all foreseeable financial consequences of entering the transaction.
 - If it is an "information" case, the negligent adviser is responsible only for the foreseeable financial consequences of the advice and/or information being wrong. Only losses which would not have been suffered if the advice and/or information had been correct are recoverable.
2. Applying the above approach, the Court of Appeal concluded this was clearly an "information" case. GT had provided only one piece of information and MBS' decision to enter the swaps was based not only on that but also on other commercial considerations.
3. As such, GT would only be liable for the foreseeable financial consequences of the advice and/or information being wrong. Following Lord Sumption in *Hughes-Holland*, the Court of Appeal held it was for MBS to prove the losses were a consequence of the negligent advice (i.e. that they would not have been suffered had the advice been correct), which they failed to do. In fact, the Court found the losses incurred on closing out the swaps were as a result of interest rate movements/market forces. Had the advice been correct (i.e. the counter-factual) MBS would have continued to hold the swaps and the evidence was had they held them to term MBS would have suffered even greater loss.

4. Despite the differences in reasoning, the Commercial Court reached the correct overall conclusion; namely that the MTM losses are not recoverable.

The Court of Appeal's decision provides useful clarification on the application of the *SAAMCO* principle and the decision in *Hughes-Holland*, and the circumstances in which auditors will be found to have assumed responsibility for the commercial losses of their clients.

The full judgment can be found here - <https://www.bailii.org/ew/cases/EWCA/Civ/2019/40.html>

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