

Can a valuer be found personally liable?

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Alexandra Anderson and Katherine Fletcher address the question of whether a valuer can be found personally liable

A client is threatening to sue me personally after I valued their property, but I was working for a surveying company at the time. Are they able to do this?

Whether a valuer can be found personally liable will depend on the facts of the case. However, two decisions in 2014 suggest that the courts are less willing to find valuers personally liable. These rulings stand in contrast to the 2001 case of [Merrett v Babb](#) and will come as welcome news for surveyors.

In *Merrett*, the claimant Diana Merrett bought a property, which she alleged had been overvalued by John Babb. His firm had provided a mortgage valuation report on instructions from the lender, but the claimant had seen a copy and claimed that she had relied on it when purchasing the property. The court held that the claimant was entitled to pursue Babb personally, after his firm became insolvent. As a result, Babb had to compensate the claimant for her losses. The court reached this conclusion despite the fact that Babb had received no payment for undertaking the valuation ? it was his firm that had received the fee for the report.

Fortunately, 2014 saw the courts rolling back the principles established in *Merrett*, with 2 separate decisions, both in favour of valuers who had been sued personally by their clients. In both cases, the courts concluded that the valuer had assumed no personal responsibility for the advice provided.

In *Matthews v Ashdown Lyons & Maldoom*, Fraser Maldoom provided valuation advice to Matthews, while working at Ashdown Lyons. The company subsequently went into administration and Matthews brought proceedings against Maldoom personally, alleging that he had overvalued the property. The court rejected the claim, stressing that the decision in *Merrett* to find the valuer personally liable had been made with very clear public policy issues in mind. In *Merrett*, the claimant had no means of recourse other than to pursue Babb personally. In *Matthews*, the claimant still had the right to pursue Ashdown Lyons ? the fact that the company was in administration was not sufficient justification to extend the liability to Maldoom personally.

In *Mavis Russell v (1) Walker & Co (2) Robert Chisnall & Others*, the courts once again refused to follow the decision in *Merrett*. In this case, the claimant sued the valuer, Chisnall, after Walker & Co, the firm for whom he was working when he prepared a Homebuyers Report, became insolvent. As in *Matthews*, the judge rejected the claim and stressed that the facts of the claim could not be reconciled with the principles set out in *Merrett*.

What if I work for a partnership?

Both the 2014 cases involved private limited companies. In Matthews, the court stressed that the fact that Ashdown Lyons was a separate legal entity was a significant factor. Merrett, on the other hand, involved a surveying firm, of which Babb was the sole partner. There may therefore be a greater risk for valuers who work for partnerships than those who work for limited companies. One of the key attractions of working for a company, rather than a partnership, is that you can avoid the risks that come with being jointly and severally liable with all partners for any liabilities incurred by the partnership.

Does the claimant's financial position matter?

The cases indicate that this will be a key consideration. In Matthews, for example, the court found that the claimant was of reasonable means and had appointed a separate surveyor for his own benefit, rather than relying on the report commissioned by the lender. In Merrett, by contrast, the claimant was a woman of modest means and the property was low in value. In such circumstances, it was held "reasonably foreseeable" that she would not obtain a further valuation report and would, instead, rely on the valuation produced for the lender.

It could be argued, therefore, that the wealthier the claimant purchaser, and the more valuable the property, the less likely it is that the courts will find that the valuer should owe a personal duty.

The two cases provide some welcome clarity on the principles established in Merrett. At the date of writing, the Mavis Russell case is going to appeal. We are optimistic that the Court of Appeal will uphold the original decision ? watch this space.

Alexandra Anderson and Katherine Fletcher specialise in defending claims against surveyors at [RPC](#)