Issue of valuation negligence

Property valuers have faced challenges in the past decade, because of the increase in both number and size of negligence claims by lenders (Kincaid & Murdoch, 2003). It has become a recognized legal principle that the valuer is liable to clients for negligence and breach of contract obligations. According to Civil Liability Act 2002 (NSW), negligence is a failure to take reasonable care to another person causing injury, loss or damage as a result. Generally, these lapses are often due to the valuers themselves being careless or not paying attention to their duties. The results revealed the fluctuations in property prices, sending the wrong signals to market participants and endangering the future of the property market. sued by clients. Also, the valuation negligence causes the appraiser is sued by clients, lost the credibility and integrity. This oversight can lead to damages for the loss suffered by the valuer's clients. This paper examines the concepts of valuation negligence including inappropriate sale evidence, negligence of inspection, the margin of error and errors in methodology, data and analysis. It reviews previous case studies on the subject of valuation accuracy and valuation negligence case in both nationally and internationally. This essay also provides recommendations to avoid professional negligence for property valuers. The primary purpose of the article emphasises that appraisers must show responsibility in all aspects of their professional work to avoid breach of duty of care.

Since tort reform, there have been a considerable number of lawsuits against appraisers for negligence (Blake & Eves, 2011) and there have been several cases dealing with valuation accuracy and negligence. The most significant case in relation to professional negligence is *I & L Securities Pty Ltd v. HTW*

Valuers (Brisbane) Pty Ltd (2002), in this case the borrower owned the land and wanted to develop the land and sough refinancing from other financial firms. The borrower obtained a valuation report from HTW company and the valuation valued at $1. 576 billion. The HTW appraiser alsoadvised the lender I & L Securities Pty Ltd can rely on the valuation report for mortgage security purposes. Therefore, the lender relied on this report to lent $950, 000 to the borrower. However, after one month, the borrower defaulted on its obligations. Finally, the lender enforced the right to sell the mortgaged land, which was sold at $592, 367 (API, 2018). The outcome from the court conducted that the valuer had the misleading and deceptive conduct (High Court of Australia, 2002). Also, The Court ordered that HTW company pay contributory negligence in the context of awarding damages under sections 82 and 87 of the Trade Practices Act 1974 (the TPA).

Regarding the court's evidence, most of the appraisers was negligent to use improper sale evidence (Boyd & Irons, 2002). To prevent the happening of such negligence, valuers must find out most comparable sale evidence refer to similarity of size, age, location, type and conditions. Also, the sale evidence should be within six months of the date of valuation which is considered to be sale evidence compared with the subject property (Royal Institution of Chartered Surveyors, 2012). Further, the valuer did not give any explanation and analysis to explain why this sale evidence is be considered to support this valuation, so the court held that the valuation did not prepare with reasonable care (Rourke, 1998). As a result, the case emphasised the need for caution in identifying sales that are said to be comparable. The appraiser must have confidence and reliable sale and rental

evidence to support and proof the valuation is in line with the current market value.

A. Hosie & Co. v. Indian Head Credit Union Ltd (1994) is another clear case that the valuer failed to the standard of care. The purchaser relied upon the report of the valuation then purchased the real estate. However, two years later, the buyer gave up the real estate because the buyer found that it cost much money to repair the building, and the court also identified that it was structurally problematic building. Thus, the value of this property should be value of land minus cost of demolition rather than full value of whole land and building. Thus, the judge found that the appraiser had negligence, and failed to meet the standard of care. Consequently, " an inspection of the property must be sufficiently comprehensive to enable the member to complete the valuation in accordance with the accepted valuation practice" (API, 2015, p. 7). The responsibility of valuer is to do a more thorough inspection to see if there are any visible cracks in the walls and whether the roof and floor are tilted. Any visible structure issue can be seen and found so that the valuer can examine severe problems of the building during the inspection. Valuers should also seek assistance from other experts such as surveyors to identify further any issue of property not only the construction but also environmental factors and law issues avoiding negligence and meet the standard of care. Further, the valuation company is responsible to employ a valuer of sufficient experience and knowledge to execute the site inspection and prepare and provide the valuation reports.

Furthermore, margin of error is another clear issue for valuation negligence, in assessing the value of the land, the court has accepted the margin of error

because of various assumptions. However, in *Singer & Friedlander v John D Wood & Co* (1977) case. The Court held that in general, about 10% of the figures could be accepted to be correct figure. In exceptional cases, the allowed margin can be extended to approximately 15%. Therefore, any estimate outside this margin of error raises questions about the appraiser's competence. In a similar case *Banque Bruxelles Lambert SA v Eagle Star Insurance Co Ltd* (1995), the plaintiff was mortgagee, and the valuer was the defendant who neglectfully overvalued the property, and then the plaintiff accepted mortgages of the properties. Subsequently, the property market dropped dramatically, and the plaintiff defaulted. After the sale, the plaintiffs received much less than they had paid in advance (Swarb. Co. Uk, 2018). Additionally, in *Genworth Financial Mortgage Insurance v Hodder Rook & Associates* (2010) case, the court concluded that the valuation surpasses acceptable range more than 10% or lower over 25%. This is adequate to allow the judge to determine the valuation wasnegligent.

Accordingly, in those margin of error cases, valuers must be well versed in market trends but also be sensitive to the particular locality of the land that they value which include the surrounding countryside, quality of access to the land. More importantly, absorbing the latest trends is significant for the valuer to continually receive the most recent information through the real estate agency, housing mortgage staffs of bank and other real estate professionals. Further, the valuer also needs to consider the demand of the localities, and employment supply for labour as demand is critical effect the value. Valuers should draw on their own resources, current trends in professional publications, local comparators and elsewhere to complete his

task. These considerations are essential to minimise valuation variation. Also, due to the future of the real estate market is unpredictable, the valuer must state that later variations in value that are unforeseen to the valuer. Therefore, it is significant that valuers to write a statement in the valuation report, to state that the valuation was completed on the date of the valuation, the appraiser’s opinion and the price of the property is valid on the date of the valuation to prevent future uncertainty of market and exonerate any obligation from the third party who depends on the valuation report (API, 2006). The Court stated that this provision was effective in preventing the third party from using reports and subsequently suing appraisers for negligence (Babawale, 2013).

Another example of the valuation negligence is *Interchase Corporation Limited v ACN 010 087 573 Pty Ltd* (2000), In 1987 Interchase Corporation Limited was the registered proprietor of a near 1. 3-hectare parcel of land in the Brisbane central and his parent company Property Estates Pty Limited (PEQ) wanted to develop the retail shopping complex known as the Myer Centre. The findings from Judge in this case of valuation was that there are some errors in the methodology, data, and analysis employed (Boyd & Irons, 2002). The valuer used rental income evidence for valuation from unreliable sources such as multi-theatre complex and taverns rather than traditionally, which were different facilities compared with the subject property, and valuer also included electricity profits in valuation. These calculation errors caused the property was overstated the value. The Court concluded that due to errors in the methodology, acceptance of information uncritically from the director of PEQ, and the desire to achieve a figure wanted by the client, the

valuation had been negligently prepared. Further, with the assistance of three expert witnesses, the court found that the discounted cash flow method was the approach to use for this valuation rather than capitalisation method resulting in over-valued of the Myer Centre.

The case stressed that the methods adopted by the valuers must be recognised and strictly adhered to and the valuation calculated was within the acceptable range concerning other comparable properties and their selling prices. According to International Valuation Standards Council (2011), the valuer " not to allow conflict of interest, or undue influence or bias to override professional or business judgement" (p. 3). Besides this, a valuer should verify any assumptions or information provided by occupiers, clients or owners from independent or objective sources, especially if the information has come from a source that is not independent (API, 2006). The valuation of any property must be independent and not subject to any influence or prejudiced towards an outcome favourable to a client. If not fullyindependent, professionals may be prosecuted by those who rely on the valuation.

To summarise above legal cases, as the real estate prices is fluctuating by market trend and many mortgage holders seek to refinance in the current financial environment, the court's decision provides a timely and sobering reminder of the responsibilities of property appraisers and the liability they may face in valuation negligence, misrepresentation or fraud. An established principle of Australian law is that appraisers have a duty of care to all parties seeking to rely on their estimates and that appraisers are therefore required to carry out their duties with appropriate skill and responsibility in order to

achieve a professional ethic (Cradduck, 2015). While the court acknowledges the inaccuracy of the work done by appraisers, the valuer remains as obliged as ever to conduct any valuation with a reasonable degree of expertise and care. To achieve the duty of reasonable care, it is necessary that evaluators continue to improve their knowledge and capabilities of professional. The association can significantly help this process by ensuring concise standards. More importantly, the valuer should totally execute duty of care and ethical standards, improving the accuracy and variability of valuation to avoid professional negligence.

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