

## Submission to Senate Inquiry

### "Effects of the GFC on the Australian Banking Sector"

May 20<sup>th</sup> 2012

Economics References Committee  
PO Box 6100  
Parliament House  
Canberra, ACT, 2600

Dear Senators,

Please find attached my submission that relates to how I/my business was treated by Bankwest after it was acquired by the Commonwealth Bank of Australia during the GFC in late 2008.

**Add whatever detail you want here.**

This is only a brief outline as to the events that took place through 2007-2010 with Bankwest

Introduction:

**Add in here what happened, nature of your exposure with Bankwest. Sum up what they did and the impact on you and your business.**

We sort and obtained funding from Bankwest for our real estate development project. Bankwest rescinded the funding when the project was approximately 75% completed with a few days notice with no warning or real explanation. Due to personal guarantees given to obtain the loan for the project, the final result was personal bankruptcy for myself, my wife and our partner and all relevant personal assets taken under bankruptcy Estate as a result, with a combined loss of approx 8 properties for both parties including family homes. This has resulted in considerable worry, anguish, loss of sleep, and personal humiliation as any financial recovery after bankruptcy is highly unlikely due to the ages of all concerned.

All the companies involved in the Development in question have been placed in receivership i.e. Pinah Holding, Torrens Equity and Panorama Gardens and

subsequently cease to function. All directors involved to the above companies have now been declared bankrupt as of 2012.

#### **Brief background about your business.**

Our business was a small development of 14 cluster homes in the Southern Highlands, NSW.

It was a joint venture between Pinah Holdings Pty Ltd and Torrens Equity Developments, two small family companies coming together to form Panorama Gardens Pty Ltd as the company to go forward with the purchase of the site, development and sale of the completed development.

#### **What you were doing.**

We were developing the site at Moss Vale, Southern Highland. A project of 14 architect designed homes, situated on one highest remaining development sites in the Southern Highland. The site had commanding views of the surrounding country side and each house had been designed to take in as much view as was practicable. It was a prime building site and much sort after at the time.

#### **Why you went to the bank.**

Bankwest had come into the market at this time aggressively with attractive numbers and were keen to do the deal.

#### **Nature of the facility etc.**

Construction finance backed up by director's personal guarantees.

#### **Dates of what happened.**

A Brief timeline:

- Dec 2006 Mandate letter signed and returned
- May 2007 Letter of offer
- Sept 2007 land site payout settled
- May 2007 Tripartite deed signed
- July 2007 Construction Certificate released
- May 2007 Mezzanine funding agreement signed
- Sept 2008 construction progress meeting with bank
- Nov 2008 On site progress meeting verbal requests for 2<sup>nd</sup> mortgages
- Feb 2009 further request for 2<sup>nd</sup> mortgages
- May 2009 last meeting on site, concerns over rain delays. Bank sort clarification of construction timeline from Builder and assurances were

given. We were on track of completion date for the 1st & 2<sup>nd</sup> stages with 9 houses.

- July 2009 meeting at bank offices; further review of progress.
- August 2009 advertising campaign started. Also still on-going First Home Buyers Scheme
- Oct 2009 final construction meeting and funding withdrawn.
- Oct 2009 continuous efforts to obtain funding across three states
- May 2010 meeting with Mezzanine Funder & his consortium group who informed us he had struck a deal with the bank to purchase the site and sort to purchase it from us for approx 15% of its value.
- June 2010 letter from Gadens indicating they were acting for the bank and a default notice had been issued.
- July 2010 Clarence St Sydney meeting with the bank.
- July 2010 Default notices from Mezzanine Funder received.
- Through 2010 various funding offers sort and received only to fail at the last minute.
- Nov 2010 receivers appointed.
- Dec 2010 submitted offer for the site and it was not accepted.
- Dec 23 2010 site sold and the receivers notified us by email.
- 2012 all the directors declared bankrupt.

#### **What the bank did.**

Feb. 2004: We approached Bankwest for funding and a Mandate letter was received, signed and returned Dec 2006. This was followed up with a Letter of offer March 2007.

Bankwest offered the funding with a loan of \$4.15million to Panorama Gardens Pty Ltd which includes the land purchase price of \$1.4million and the construction cost of the 14 cluster homes.

As part of the loan set up we gave personal guarantees for the loan as well as substantial pre-sale commitments. Towards the end of the process of the loan set-up, it came as a surprise that we were required to obtain Mezzanine funding for approx 8% of the loan total, with an interest rate of 25%. At the beginning of the loan negotiation, we were made to believe that Bankwest was prepared to offer us the full amount of the loan required. In the end we have no other option but to obtain the mezzanine funding.

Over the course of the project specially towards the end of 2008 and during our progress meetings with Bank Officers, it became apparent that the various managers we came in contact with after our initial Bankwest Manager had left Bankwest, were not familiar with the building industry and most if not all had not read and understood the loan agreement on our files. At one site meeting with bank officials and the builder, one of the bank official put it to us that we were over drawn on the construction cost to the tune of 1.4million which was incorrect. We had up to date bank statements indicating we were right on target. The bank statement indicated we were well within the \$4.15 million loan amount and on track to finish the nine houses (stage 1 & 2) with facility funds to spare. We eventually figured out that the Bankwest official had added the purchase price of the land to the construction numbers which was incorrect. The land and construction costs were inclusive in the loan agreement.

August 2009 we commenced sales advertising of the 9 houses which was stages 1&2, of the Development. At this time the First home buyers Scheme was still on-going. The market was still moving along in the Southern Highlands.

We put in place advertising campaign that included the following:

- Domain.com.au and Real Estate.com.au and our own web site
- Radio advertising
- Local Southern Highland new print media
- Selected Suburban paper in the South west and Southern Sydney areas
- Letters of conjunction issued to selected Real Estate agents in these area.
- This was to be followed up with a comprehensive brochure and CD mail out to over 40 Investment Planners and Self Funded Superannuation Advisors in the South western Sydney area and Canberra

We have anticipated that the sale of the 9 houses of stages 1&2 would have paid up all the funding back to the bank and to the Mezzanine funder.

Should there be a shortfall of the Mezzanine funder, we would have worked it out in kind as he had expressed an interest in one of the properties.

We had encouraging sales enquiries in the 2-3 weeks of the sale campaign prior to the "Oct. 09 meeting" with Bankwest. At the time of the sales campaign the kitchens were ready to be delivered and fitted. So those enquiring were happy to return when Kitchens were installed as it was only a matter of days and weeks.

At the October 1<sup>st</sup> 2009 meeting, Bankwest informed us that they were not funding the project any further irrespective of what we did or suggested.

Impact:

**Detail the impact of the Bank's actions on your life, your family and your business.**

The result of the failed project, and eventually the end result of us filing bankruptcy as a result of our personal guarantees of the loans was devastating. Everything we worked for more than 30 years of our marriage went to nothing.

We are now declared bankrupt and all our investment properties including our home are now in the hands of the Trustee. As both my wife and I are both near retirement ages, it is highly unlikely that we shall manage any sort of financial recovery and as it is we may be required to work well into our seventies.

**Sum up what happened, what the bank did wrong. Any attempts you made to reach an amicable solution.**

Conclusion:

At the meeting on Oct'09, the bank indicated that they had cancelled the project and written it off as a bad debt. At the time, the project was 75% completed. This was done with a few days notice even though we were in the middle of our sales campaign and First Home buyers Scheme, and there was more than enough funds to complete the 9 houses in question which is only 6-8 weeks to complete.

**Bankwest at this point stated that there was nothing we could say or do, that would result in the bank coming back into the deal. We also refuted the Bank's "valuations" which were mentioned to us only verbally, with our own historical sales figures and valuations. The bank officials dismissed it out of hand as in-accurate and fanciful. Our figures were supplied by local RE agents and were based on actual sales of similar homes over the previous 6 months taken from RP Data and RedHat. Incidentally, we requested a copy of the minutes of the meeting and copy of their valuations, which the bank promised to give us and which we never received.**

**At the meeting, we even suggested that if we had a 'fire sale' once the houses are completed, at the very least the bank would get its money back, to that we were told 'the matter was closed'.**

**Incidentally at the previous meetings before Oct'09, the Bank stated that the amount for completion of the remaining 4 houses [stage three which was the final stage] was inaccurate according to their "experts". Although prior to this, Bankwest had demanded and received a detailed fixed price quote from the builder, fixing all costs for all the remaining construction in an agreement signed off by the builder and the bank. The Builder was Fairmont Homes, a well known and respected builder in Southern Sydney with over 25 years experience. We had mentioned to the bank that with the onset and effects of the GFC that we might take an option to defer stage three of the project until things got better. Their comment was no, all the houses had to be built and finished.**

**Our last meeting with the bank was at their Clarence St. offices in Sydney. We called for the meeting and laid out over the phone our plans for seeking a way forward, and explain to them that if we could not find a suitable solution, it would result Bankruptcy for us and Bankwest would not benefit anything from such a move.**

**The final Clarence St meeting with Bankwest was an abject failure and a waste of time, as they were not interested in anything we had to say. We were also informed that the previous senior asset manager of whom we had**

been dealing with at the last funding meeting in Oct'09, had now retired and was no longer available for comment.

There were numerous conditions put to us verbally by the bank officers at the meeting, i.e.

- Preferred that the offer be in an email and not hard copy by mail and did not want it to include any legal representatives.
- Wanted to keep the costs down as they didn't see the likelihood of full payment and extra costs will lessen their return.
- Wanted 10% deposit in good faith that our offer is real and this should be done within 24 hrs of the meeting.
- Wanted immediate lump sum settlement from us with in 48 hrs of the full amount.
- Advised that legal proceedings will continue until full payment is received.
- Wanted the offer direct from us (to avoid unnecessary cost, they said) and not from our legal representative.
- Made constant reference to 'without prejudice' just prior to or after any reinforcement of a condition.
- Wanted the offer to be in much detail, along with all details of the funder etc.
- Advised that the site will be put in the hands of a real estate agent to sell by week's end.
- No business cards offered in respect of what position they were at the bank. (This is contrary to their normal practice on all our previous meetings. When asked for them they said they did not have any.)
- The bank officer was so arrogant, almost to the point of physical intimidation, standing and leaning towards us on the table during the whole meeting and the meeting was adjourned after he gave us the conditions, without giving us any chance of what we have to say to get an amicable solution.
- We left the meeting humiliated and let down by the very Bank who told us during the initial loan negotiation that we will be partners together to make the project successful. In the end, it was the very action of the Bank that failed the project.

After Bankwest pulled out the funding, we made great efforts to obtain refinance for our project, approaching funders across three states, including right through the receivership process and up to the day before the sale of the development site.

**We were able to find a funder at the last minute. But the new funder placed conditions on the funding that Bankwest found not to be to their liking, ie for Bankwest to release us from Personal Guarantees.**

**Yours Faithfully,**

**Neil & Florence Mackay**

**Any attachments:**

**Send any supporting attachments that highlight your case and demonstrate that what the bank did was wrong.**

**Add here the timeline as prepared for IMF and the class action**