



ASIC reviews CBA resort dispute

The watchdog has requested details of the developer's case against the bank

RICHARD GLUYAS
LITIGATION

THE corporate watchdog is making inquiries into property developer Rory O'Brien's \$512 million unconscionable conduct claim against Commonwealth Bank.

Mr O'Brien, who lost his 104-villa Whisper Bay luxury resort in the Whitsundays when Bankwest foreclosed on the near-complete project in 2009, said yesterday the Australian Securities & Investments Commission had obtained a copy of his lengthy court affidavit.

"I was contacted by an ASIC officer who said he wanted to review my evidence," the Sydney-based developer said.

A spokesman confirmed ASIC had obtained the affidavit but said at this stage there was no formal investigation because the commission was only reviewing the case.

CBA, which rescued Bankwest in a \$2.1 billion bailout in December 2008, said yesterday that it was not aware of any requests by ASIC but would respond if they were made.

The bank declined to comment

on the substance of the case. Previously, though, it has rejected suggestions by Mr O'Brien and others that it stood to benefit from "clawback" provisions in the December 2008 agreement to buy Bankwest that enabled CBA to pay less if bad loans exceeded what its limited due diligence revealed.

The dispute dates back to April 2009, when Bankwest effectively demanded immediate repayment of \$178m in loans to Mr O'Brien, and then sent in receivers to Whisper Bay.

While the loans had matured several months before in January, Mr O'Brien has said he was repeatedly assured that the debt would be rolled over, with the project on-budget and all but complete.

There was also a trust account at law firm Mallesons containing 10 per cent deposits on \$106m of pre-sales, mostly to high-net-

worth buyers, including former prime minister Bob Hawke.

Other purchasers included Christopher Palmer-Tomkinson,

who served as managing director of corporate finance at Cazenove, the Queen's stockbroker, and Major General Sharafuddin Sharaf, vice-chairman of the multinational Sharaf Group and former head of the Dubai police force.

Email exchanges show Bankwest was continuing to support Whisper Bay until weeks before its collapse.

In March 2009, two months after Mr O'Brien's loans became due

and payable, a Bankwest officer sent a reassuring email to Danny Haddad, chief executive of the proposed resort operator Essque Hotels and Resorts.

The email said Bankwest was "looking favourably re the Essque proposition in relation to the pre-opening regime".

CBA is claiming \$160m from Mr O'Brien under personal guarantees the developer provided for the Whisper Bay funding.

Mr O'Brien responded with his \$512m cross-claim, which alleges unconscionable conduct by the bank in terminating his loans.