

Select Committee on Lending to Primary Production Customers

ANZ Response to submission made by David and Elizabeth Browning

Background and Summary

ANZ has had a long standing disagreement with Mr and Mrs Browning around the circumstances of their claim against Landmark and ANZ, and despite our best efforts, we have been unable to resolve matters with them. The issues raised have been the subject of protracted and costly litigation for both parties over many years.

In 2007, David and Elizabeth Browning (the Brownings) purchased the original family property, Burslem Station from David's father as part of a succession plan. They also purchased another property, Casterton Station in order to build scale to their beef cattle farming operations.

The purchase of these properties was financed by Landmark. On 22 June 2007, Landmark issued a Letter of Offer to the Brownings for a Term Loan of \$3.5m and an Overdraft facility of \$550,000. These loan facilities were secured by mortgages over Burslem, Casterton and livestock. We are aware that the Brownings claim that their signatures on a number of Landmark documents are forgeries or have been "cut and pasted". We have not seen any evidence that supports this claim.

Over the next couple of years, Landmark agreed to a number of increases to the Overdraft facility to accommodate delays with cattle sales, to assist with the seasonal impacts on the Brownings' cash flow, and to assist the Brownings to purchase more cattle to build their herd.

There appears to have been a number of events that contributed to the Brownings' financial difficulties, including delayed cattle sales as a result of the poor condition of cattle affected by poor weather conditions, and a major cattle purchase in 2009. In 2009, the Brownings entered into a contract to purchase a significant cow herd (\$1.3m). This deal resulted in loss due to the cattle delivered not meeting specifications and the Brownings' inability to seek compensation. The herd was drought affected so the herd did not provide the financial return anticipated.

The above two events, together with the subsequent collapse in cattle prices had a detrimental effect on the Brownings' business.

In September 2009, the Brownings agreed to a debt reduction program with Landmark, which involved the Brownings selling one of their properties (Casterton Station) and a herd of cattle to reduce debt by \$2.8 million. The Brownings were expecting Casterton to be sold and settled by May 2010 to yield \$1.5m and expected to see \$1.3m in cattle proceeds by June 2010.

Casterton Station was offered for sale by public auction by the Brownings in November 2009, but failed to sell. Throughout 2010 the Brownings continued efforts to sell the property by private treaty.

ANZ's acquisition of the Landmark loan and deposit book

As at March 2010, when ANZ acquired the Landmark loan book, the Brownings lending was an Overdraft (limit \$1.25 million) and a Term loan (\$3.5 million). The amount owing on the overdraft exceeded the limit by approximately \$1m and the Brownings had failed to repay this excess (from cattle sale proceeds) by 31 July 2009, as required under the Landmark Letter of Offer. This was a default under the loan terms and entitled Landmark to demand full repayment of all loans, including the Term Loan.

In March 2010, the Brownings signed an ANZ Letter of Offer (dated 19 March 2010) which established a new overdraft (limit \$260,000) and a term loan (\$5.97 million). This benefited the Brownings as it converted the overdrawn Landmark Overdraft to a cheaper term loan and removed the default. The new security taken by ANZ for the overdraft and Term Loan was the same as the security which the Brownings had provided for the Landmark loans, that is, mortgages over Burslem, Casterton and livestock. It does appear that there were some issues/mistakes with the form of the new ANZ security documents which meant that the Brownings had to sign them a number of times. ANZ denies that the Brownings were pressured, blackmailed or tricked into signing the new security documents.

To reflect the previously agreed debt reduction arrangements with Landmark, it was a condition of the ANZ letter of offer that there be debt reduction of \$2.8 million by 31 July 2010, principally through the sale of Casterton Station and the sale of cattle. The 31 July 2010 date was agreed on the basis that the Brownings had commenced the sales program for Casterton Station in September 2009, and it was believed that it would be completed by 31 July 2010.

On 2 June 2010, Mr Browning advised that there were 3 interested buyers for Casterton and the Brownings were still trying to negotiate a price of \$1.6m. Mr Browning confirmed that it was still their intention to sell Casterton and the cattle, and to lease out Burslem. Mr Browning

also told ANZ that he had a currency business that was performing well and growing and that he held \$5.4 million in a trust in the United States (but was unable to get it out at that stage).

More time given to the Brownings

ANZ subsequently agreed to a number of extensions giving the Brownings more time to sell Casterton. ANZ also agreed to drop the debt reduction figure from \$2.8 million to \$2.6 million based on the Brownings' advice that they had reduced their sale price expectation for Casterton Station. Ultimately the Brownings were given until November 2011 before a default notice was issued by ANZ. ANZ acknowledges that this default notice incorrectly named PCL as the lender (instead of ANZ), but does not believe that this caused the Brownings any loss.

In the lead up to the November 2011 default notice, there were a number of farm visits and other telephone discussions between ANZ and the Brownings to monitor their progress and to follow up the Brownings for a plan/strategy and cash flow to demonstrate future viability and serviceability. The Brownings were no longer actively seeking to sell Casterton Station and had only been able to make interest payments on their loans because ANZ agreed to increase their overdraft limit to allow these payments to be made. When ANZ refused any further increases, the Brownings did not make any further repayments on their loans.

Attempts at mediation and Promissory Note claims

Before commencing legal proceedings, ANZ invited the Brownings on a number of occasions to meet or mediate, including an invitation to participate in a Farm Debt Mediation.

In March 2012 the Brownings asserted that they had repaid ANZ's debt with a "Promissory Note". The Court of Appeal later described this assertion as "foolish". The Brownings did not accept the invitation to attend Farm Debt Mediation and in May 2012 enforcement notices were issued and it was recommended that the Brownings obtain their own legal advice.

Following the issuing of the enforcement notices, ANZ by its lawyers, also sent an email to the Brownings noting that ANZ remained willing to seek an amicable resolution and again inviting the Brownings to mediation. The Brownings replied making reference to the Promissory Note and advising that they considered the matter closed and finalised and asked ANZ to "cease and desist" any further communication.

Protracted Legal Proceedings

It was not until August 2012, that ANZ reluctantly commenced legal proceedings against the Brownings. ANZ believes it was unable to reach an early resolution with the Brownings because of their continued assertion that they had given ANZ a promissory note which completely discharged them of their debt obligations to ANZ.

In mid-2013, ANZ appointed receivers who ultimately sold Casterton and Burslem stations and livestock. The Brownings sought to retake possession of the properties and challenged the appointment of the receivers. The Supreme Court confirmed the appointment was valid. The involvement of the police or Court sheriff in any civil matter is extremely rare. In this case, their involvement was necessary because of the action taken by the Brownings and their associates (one of whom had a firearm) to re-enter Burslem station. Settlement of the sale of the properties occurred in late 2013, leaving ANZ with a significant residual debt.

The legal proceedings became extremely protracted, and have only recently concluded. Throughout the proceedings, ANZ attempted to resolve matters with the Brownings on a number of occasions including at 2 formal mediations with the Brownings and their legal advisors in October 2014 and December 2015.

The Brownings were seeking significant damages from ANZ in the order of \$15 million. While the Brownings did have legal advisors from time to time throughout the legal proceedings, they were self represented at the trial in June 2016. The Court found in favour of ANZ and dismissed all of the claims made by the Brownings. ANZ has not taken any further action against the Brownings in relation to the outstanding judgment debt or the cost orders made by the Court against the Brownings.

In 2016, Mr Peter Browning (David's father) commenced a court action against ANZ and the receivers in relation to the receivers' sale of some cattle in 2014, which Peter alleged he owned. ANZ has recently agreed to resolve this dispute and is dealing with Peter's lawyers in relation to the payment of Peter's legal costs.