

## Submission to Senate Inquiry

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

16/5/2012

#### Economics References Committee

PO Box 6100

Parliament House

Canberra, ACT, 2600

Dear Senators,

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

#### **Introduction:**

My business Partner \_\_\_\_\_, my wife \_\_\_\_\_ and I owned a shopping centre since 1984, the centre was known as the The Dernancourt Village Shopping Centre. In 2002 we decided to upgrade the shopping centre, but it took nearly 4 years to achieve council approval, architectural changes, council lobbying, lawyers etc.

Our relationship with Bankwest began in or about October 2007, where it agreed to finance the redevelopment of the Dernancourt Village Shopping Centre, an asset which we had ownership of at that time. Please note that the Dernancourt Village Shopping Centre is comprised of three titles, being:

- 832-840 Lower North East Road, Dernancourt, SA
- 820 Lower North East Road, Dernancourt, SA
- 830 Lower North East Road, Dernancourt, SA

We believe that the actions of Bankwest and others may have caused us to lose ownership of the Dernancourt Village Shopping Centre and have also subsequently caused our own personal insolvencies. As such, there is value in scrutinising the actions of the bank with a view to possibly instigating formal proceedings. We therefore seek your help and view as to whether there are valid grounds to pursue this matter further.

## **Summary of events**

### **Arranging finance for the redevelopment**

1. In 2002 we decided to redevelop the Dernancourt Village Shopping Centre.
2. After we had received council approval for the redevelopment in February 2007, we engaged Quantity Surveyors and Construction Costs Consultants to develop a draft construction fees and schedules based on the architectural plans drawn by our Architects for the redevelopment.
3. As a matter of background, construction began in April 2007 and was expected to be completed in September 2008. The actual completion date for the redevelopment was 14 April 2009.
4. The final estimate for the redevelopment as provided by the QS report ranged between \$11.5 million - \$12 million.
5. The QS report was sent to our Architects and to our financial broker Mr K, the broker who was representing us and coordinating the offers to tender to the builders and the banks.
6. In early 2007 we received a construction quote from a Builder S for \$10.4 million. This was the most competitive quote we had received at that time.
7. Shortly afterwards, we reengaged the QS to verify that the construction costs provided by Savills Australia were correct and reflected the completed construction of the redevelopment.
8. The QS confirmed that the costs met the full construction of the redevelopment.
9. The QS subsequently sent the final QS report to Mr K who agreed to tender it to all the major banks seeking the most favourable terms.
10. Unbeknownst to us at the time, Mr K had not tendered with Westpac and ANZ as he was not on their list of brokers. Mr K would not agree to tender the documents with those banks.
11. At that time, Mr K advised that the only bank willing to finance the redevelopment was Bankwest.
12. Independently of Mr K, we subsequently approached Westpac and ANZ using the draft quotes provided by the QS.
13. From preliminary discussions, ANZ expressed an interest in financing the redevelopment and were willing to provide us with an indicative figure, but requested additional information including the final QS report before finalising the arrangement.
14. In accordance with Mr K's advice, we agreed to refrain from making a decision until he had received all of the responses from the banks that he had tendered with.
15. We subsequently met with the SA general managers of Bankwest and during the meeting they informed us that they wished to finance the redevelopment. We informed them that we were waiting on responses from all of the banks before making our final decision concerning the financing of the redevelopment.
16. Mr K advised us that Bankwest had the cheapest rate and was the only bank willing to finance the redevelopment.
17. On Mr K's advice, we accepted the offer from Bankwest. On or about October 2007, all of the necessary documentation had been signed and the agreement was formalised.

### **Payment of professional fees**

18. Construction of the redevelopment commenced in late 2007.
19. The expected completion date of the redevelopment was October 2008. The redevelopment concluded in April 2009.
20. In early 2008, we began to receive bills from our Architects for professional fees.
21. We subsequently met with Bankwest who advised that they were not going to pay the professional fees as provision for professional fees had been deleted from the final QS report.
22. We approached both the Builder and the Architects regarding the issue of payment of the outstanding professional fees.
23. The builder S advised that the Architects should have included the professional fees in their quotation when they sent the building costs to the QS for a final analysis.
24. In response, the Architects advised that \_\_\_\_\_ signed a document agreeing to drop the professional fees.
25. \_\_\_\_\_ denies signing such a document.
26. Despite having issued requests to the Architects for a copy of the document that allegedly signed, we have yet to be provided with one.
27. We approached Mr K regarding the issue of the professional fees seeking an explanation as to why he did not advise us of the omission of the professional fees in the final QS report. He advised us that this was an oversight by him.
28. On an ongoing basis Mr K contacted Mr MA the Bankwest Manager, to seek payment of the professional fees by Bankwest. Bankwest did not agree to this proposal as it was not a term in the loan agreement.
29. We had engaged architects, brokers, and a QS to scrutinise the relevant documents on our behalf and we relied on their advice.
30. To finance the payment of the outstanding professional fees, we borrowed funds and used the equity in our houses as security and liquidated other assets.

### **Request for additional security**

31. In February 2009, we attended a meeting at the office of Mr K at the request of the bank manager Mr MA. There were others present at that meeting.
32. At that meeting, Mr MA demanded \$220,000 by Friday of that week as additional security to the \$500,000 loan that was allocated to build a new area in front of the "Haggle site".
33. I increased the mortgage on my house to make the payment to Bankwest.
34. We feel that the conduct of the manager at that meeting was inappropriate and threatening towards us. The manager threatened us with calling the loan in, reporting us to the credit department, and raising all of the loans to 18%.

35. Subsequent to this meeting, we advised the head general manager MR PP that we no longer wanted to deal with his representative Mr MA, as he intimidated us and we felt that he had told lies, and that we wished to deal directly with him instead. The general manager advised us that Mr MA was in charge of our file would be present at any discussions as he was in charge of our file.
36. At no stage did we feel comfortable raising our grievances with Bankwest given the presence of Mr MA at subsequent meetings with Bankwest.

#### **Private valuation of the redevelopment**

37. In March 2009 we approached CBRE to do a private valuation on the 3 allotments based "on completion" format.
38. The CBRE valuation of March 2009 on the 3 allotments was \$22 million.
39. The original valuation in mid-2007 was by CBRE for two allotments ( 832-840 Lower North East Road and 830 Lower North East Road Dernancourt, SA) and Savills (allotment 820 Lower North East Road, Dernancourt). The combined value was just over \$25 million.
40. We had informed Bankwest that CBRE had provided a valuation of \$22 million, but we had identified flaws with the valuation.
41. We advised CBRE that the valuation was flawed for the following reasons:
  - outgoings had been over-estimated
  - two tenancies which were on a monthly rental at the time of the valuation were to be terminated by the end of April 2009 and two new tenants were to replace them at much higher rentals, and
  - the yield used was high (8.5%) when compared to other shopping centres that had sold at lower yields.
42. We had decided to get another valuation on the 3 allotments when the redevelopment had been completed.
43. Bankwest were provided with a copy of the March 2009 valuation by CBRE despite the flaws we had identified.
44. We subsequently approached different real estate agency "S-Australia" to prepare a valuation.
45. Soon afterwards, S-Australia advised us that Mr MA had enquired to see if we had approached them for a valuation.
46. Given that both S-Australia and CBRE sat on Bankwest's panel of valuers, we terminated the S-Australia valuation and we decided to engage an independent valuer, being A-H valuers.
47. The A-H valuation was \$26 million.

#### **Unauthorised pre-capital interest withdrawal**

48. In April 2009, we changed broker and management agents. Our broker became Mr JC and the management agents became LJ Hookers.
49. In May 2009, Mr JC advised us that \$500,000 was missing from the building fund.

50. In July 2009, we attended a meeting with Mr JC and with the Bankwest managers Mr DK (the General Manager), Mr MA and Mr RT (the Credit Manager).
51. Mr JC documented the discussion at the meeting and is prepared to provide certified copies of his notes and provide an affidavit.
52. In that meeting, Mr JC questioned Mr MA why the \$500,000 had been withdrawn from the building fund without our permission.
53. Mr MA firstly responded by stating that I had given him permission to do so, to which I denied.
54. Mr MA subsequently responded that \_\_\_\_\_ had given him permission to do so, to which I denied.
55. Mr MA final response was that Mr K (the first broker) had given him permission to do so. This was later denied by Mr K.
56. In that meeting, we advised Mr MA that if we had known in October 2008 that \$500,000 was going to be withdrawn from the building fund, we would not have commenced the third stage of construction. This would have represented a \$3 million saving. Delaying this phase of construction would have been a realistic possibility.
57. We subsequently advised Mr MA that it was not fair that we were never given the opportunity to make our decision. That is when Mr DK interrupted the conversation and said he was not going to listen to a "*he said she said*" discussion. He then told us that the Bank wanted us to sell the properties or they would call in the loans.

### **Breach of LVR**

58. In our meeting with the Bankwest managers of July 2009, we were advised that we had to list the Dernancourt Village Shopping Centre on the market by early December 2009 for breach of LVR.
59. Bankwest advised that the LVR breach was based on the CBRE valuation and that they would not accept the A-H valuation (of \$26 million).
60. Mr DK and Mr RT advised us that no matter how good a valuation we achieved the bank wanted us out and that a memorandum of sale be prepared by an agent ASAP.
61. We chose L J Hookers to sell the property as our agent.
62. Mr DK advised us that we could sell the properties independently but the bank wanted the properties to be sold as follows:
  - The shopping centre site: \$17.3 million
  - The Huggle Co site: \$3.2 million
63. At that time we owed Bankwest about \$18.4 million but they advised that we had to sell the properties for \$20.5 million or they would not accept the contract.
64. In our meeting, Mr JC asked for a copy of the banks CRS. Their reply was that the Credit Application Submission on the group documents was confidential and internal Bankwest documents and they

would not provide copies to us.

65. In September 2009 Mr RT sent us an email stating that due to current high loan to valuation ratio (>88%) and low interest cover ratio due to rental shortfall (<0.85%) the Bank could request repayment of our banking facilities. However, Mr RT instead stated that we had an in principal approval to extend the group facilities until 28 February 2010.
66. In mid October 2009, we received an email from the bank stating that they had met with a number of industry specialists in respect of the timing of the sale of the Dernancourt Village Shopping Centre. They sought to arrange a time with us to discuss the comments and recommendations made by the industry specialists.
67. We responded that we agreed to attend the meeting and requested that we be notified who the industry specialist were and to provide us with copies of the reports they supplied the bank. Bankwest refused to supply us with the requested information prior to the meeting.
68. In October 2009 we met with Bankwest and the industry specialist who was CBRE. We feel that the meeting did not go well for us as CBRE had previously provided the low valuation of the completed redevelopment.
69. CBRE advised the bank during that meeting that the Dernancourt Village Shopping Centre should be placed in the market by December 2009. We strongly disagreed with that proposal as we believed it was the wrong time to sell the asset given the upcoming Christmas and summer holidays.
70. Bankwest agreed to give us until 16 December 2009 to sign a sales agency agreement with a view to the property being sold by 28 February 2010.
71. We subsequently signed a sales agreement with L J Hookers.
72. On 30 November 2009, the bank informed us that they had extended the timeframe for the sale of the property. Bankwest expected marketing of the property to commence by the end of February 2010. The property was to be under an unconditional contract of sale by 30 April 2010 and the Bankwest debt to be cleared by 30 June 2010.
73. On 13 January 2010 Bankwest sent us an email with a revised timeframe to the one agreed above, being:
  - to present an acceptable marketing plan to the Bank that included a sales agent (one acceptable to them with direct access to the agent) being appointed by 31 January 2010
  - an expression of interest campaign be completed by 15 March 2010
  - a contract of sale to be negotiated by 15 April 2010, and
  - settlement to be no later than 31 May 2010.

#### **Deed of forbearance**

74. Bankwest additionally required that we sign a deed of forbearance within a week. The deed of forbearance had been prepared by Bankwests solicitors K & Co as the bank's legal representation.

75. We subsequently engaged Mr NW as our solicitor to explain the deed of forbearance to us.
76. As explained by Mr NW, the deed required us to indemnify the Bank from any wrong doing. Given the Bank's past actions towards us, we felt uncomfortable signing the deed as it protected the bank from being sued for any wrongdoings. Mr NW advised us that if we did not sign the deed, Bankwest would call the loan in and take over the property. Mr NW did not advise that should the bank proceed down the path of taking control of the asset, it would be subject to a timely court process.
77. K & Co would only accept an amendment to the deed, being an insertion of a clause that we would not indemnify the bank for **issues that were unknown to us.**
78. We subsequently signed the deed out of fear that we would lose the property to the bank.
79. Mr JC subsequently advised us to seek another legal opinion regarding the deed.
80. We instructed SDM lawyers based in Melbourne. Mr DM verbally advised us that we should not have signed the deed as we had given away our rights. Mr DM became our instructing solicitor from late March 2010.

#### **Appointment of a sales agent and receiver**

81. Bankwest would only allow us to appoint a sales agent on their panel. We subsequently chose LL.
82. JLL subsequently placed the property on the market under expression of interest.
83. We had instructed LL that we sought a price of \$21 million.
84. By March 2010 we had received four offers, the best being approximately \$18 million.
85. We subsequently discovered that LL had been instructing potential buyers that the asking price for the shopping centre was "mid-to-high teens".
86. LL had been reporting directly to K & Co.
87. We believe that K & Co were unable to negotiate a higher purchase price than the original offer of approximately \$18 million.
88. In June 2010, the contractual agreement with JLL expired. We subsequently approached another agent Mr GT to list the property for sale.
89. In early July 2010, Mr GT had placed the property on the market and had received an offer of \$19.45 million within a week.
90. The offer was submitted to K & Co, but was unfortunately rejected.
91. Bankwest advised that the offer was rejected as a nominal deposit was paid and that they questioned the integrity of the purchaser.
92. Three days subsequent to this Bankwest appointed a receiver FH.

93. We had engaged Mr SDM to perform a credit search on the prospective purchaser. The results of the search did not identify any credit issues with the prospective purchaser.

94. The prospective purchaser instructed his own solicitor to place a caveat over the property. However, since the receiver was appointed and this had become known to other banking institutions, the purchaser had difficulty raising the necessary funds to purchase the shopping centre. The deal subsequently fell through.

The receivers performed two marketing campaigns to sell the property. We believe they have accepted an offer but we are unaware to this day of the purchase price. Mr SDM has on numerous times asked the receiver for the final pay-out figures but the receiver has refused to provide such information.

Yours Faithfully,

In Summary:



4. FH were appointed Receivers and Managers of all six companies on the 8<sup>th</sup> July 2010.
5. Location - Dernancourt Village Shopping Centre
  - 832-840 Lower North East Road, Dernancourt, SA (shopping centre site)
  - 820 Lower North East Road, Dernancourt ,SA (Haggle Co site)
  - 830 Lower North East Road, Dernancourt, SA (Car park)

Description – redevelopment of Dernancourt Shopping Centre for retail rental investment

#### 6. Details of Borrowings

<b>Borrower</b>	<b>Facility Type</b>	<b>Account No.</b>	<b>Balance as at 21/7/10</b>	<b>Current Interest Rate</b>
	Overdraft	122-012126-2	541,383	14.76%
	Variable Loan (ex Fixed Rate Loan)	122-032045-6	2,149,790	8.3517%
	Cash Advance	122-024872-5	2,496,664	8.28%
	Variable Rate Loan (ex SWAP)	122-033198-445004765	10,703,529	8.2633%
	Variable Rate Loan (ex Fixed Rate Loan)	122-032061-8	982,082	8.3517%
	Business Cheque	122-013364-9	6,507	18.26%
	Variable Rate Loan (ex Fixed Rate Loan)	122-032062-6	393,396	8.3517%
	Variable Rate Loan (ex SWAP)	122-033199-245005226	1,695,512	8.2633%
	Cash Advance	122-020967-2	500,000	8.27%

7. Outline of our losses

Basically fire-sale of the following assets due to pressure

- Loss of property known as Dernancourt Shopping Village
- Sale of my home Fitzroy SA
- Sale of second home (parents) Fitzroy SA
- Sale of home of \_\_\_\_\_, Panorama SA.
- Sale of 4 allotments Panorama
- Sale of investment house, Panorama SA
- Sale of 2 townhouses at Goodwood SA
- Sale of my business
- Inability to work at full capacity due to stress and dealing with the bank issues, which in turn resulted in loss of income from my dental practice
- Bankruptcy of all 3 guarantors

8. What would have happened if banks acted properly

- Continued ownership of Dernancourt Shopping Village
- Continued ownership of all properties at Fitzroy
- Continued ownership of Dental practice
- Income generated from dental practice would be significantly higher
- Guarantors would not be bankrupt

Once again, we greatly appreciate any assistance you are able to provide us in this matter. Please note that we are contactable on the numbers provided below at your convenience and we are eager to provide any additional information you may feel is necessary.

Regards,

Kind Regards,