

Economics References Committee,
PO Box 6100,
Parliament House,
CANBERRA ACT 2600.

7 June 2012

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.

Introduction

1. Geoffrey Mark Reiher (Geoff) and I were lessees under a lease in respect of the Grand Hotel at 34 Marshall Street, Cobar. We took over the lease in about 1997.
2. In 2007 the opportunity arose to purchase the freehold of the hotel. We completed the purchase on 9 March 2007.
3. For the purpose of the purchase we incorporated a company, Hotel Grand Cobar Pty Limited, which acted as trustee for the Grand Hotel Unit Trust. Geoff and I effectively controlled one half of the trust each, the beneficiaries being Geoff and myself and members of our respective families.
4. We borrowed the sum of \$1,350,000 from Bank of Western Australia Limited (Bankwest) to finance the purchase.
5. Further particulars are set out in the following paragraph headed "Detail".

Detail

6. Both Geoff and I had been involved in the hotel industry for most of our working lives. I was the proprietor of a hotel business at Narromine.
7. We had traded the hotel business successfully since we took over the lease in 1997.
8. When we obtained the opportunity to negotiate the purchase of the freehold, we thought that it was a good opportunity as an investment to secure the rest of our working lives and to provide for the retirement of ourselves and our families.
9. We were introduced to Bankwest by word of mouth. We were told that Bankwest was seeking new business in the Eastern states.
10. Following the introduction we had a meeting with Jason Bartlett (Jason) of Crosbie Warren Sinclair, the hotel's accountants, and a Bankwest relationship manager who negotiated the loan terms.

11. We understood from the relationship manager that Bankwest was looking for long term lending and we saw this as an opportunity to borrow the money to purchase the freehold and to then pay the loan off over a period of years to secure a good investment and to have it paid off prior to our retirement.
12. The loan was for an amount of \$1,350,000, providing for principal and interest payments over a term which I recall to be 20 years.
13. Following the completion of the purchase, the business continued to trade profitably and we had no difficulty meeting the principal and interest payments due to Bankwest.
14. There was a significant downturn in trading in 2008 because of the closing of the Endeavour Mine at Cobar and because of the global financial recession. The hotel's turnover dropped from an average of about \$20,000 per week to an average of about \$10,000 per week, sometimes less. In spite of this we managed to meet all the principal and interest payments due under the Bankwest mortgage.
15. As it became increasingly difficult to maintain the principal and interest payments to Bankwest, a meeting was arranged at the Bankwest office at Dubbo which was attended by two Bankwest officers, Geoff, Jason and my lawyer, Ross McGlynn of McGlynn & Partners (Ross). I did not attend.
16. The proposal which was made on our behalf to Bankwest which I understood to be accepted by Bankwest, was that Bankwest would agree to an interest only facility for a period of 24 months. As part of the agreement, Geoff and I agreed that we would sell to the Cobar Shire Council the carpark which was part of the land owned by the hotel. The Council wanted to obtain it for a public carpark. Geoff and I decided to sell the land as it was not necessary for the business of the hotel. The Bankwest officers were told that we expected to negotiate a sale price of \$80,000. We asked for Bankwest to agree that we would have from the sale proceeds \$5,000 for payment of creditors and \$25,000 for working capital. This would provide about \$50,000 to reduce the liability to Bankwest. It took a long time to complete the sale because the property had to be subdivided. On completion of the sale the whole net proceeds of sale were paid to Bankwest in reduction of its debt.
17. Following this meeting the facility was converted to interest only and we managed to continue to meet all interest payments due to Bankwest.
18. Things started to become difficult towards the end of 2010 as Bankwest was putting pressure on us to refinance.
19. Jason Bartlett had a meeting with Bankwest officers on 7 December 2010. Jason informed me that the meeting did not go well and that Bankwest "wanted out". Bankwest told Jason that we were to make arrangements to refinance by the end of March, failing which they would appoint a receiver. By that time trading had improved, although December is normally a flat month. We were continuing to meet our interest payments under the mortgage at that time.

20. Over the next two or three months Jason looked for alternative finance but was not able to come up with anything.
21. Because of this we decided to seek to sell a block of three poker machine entitlements. The hotel had nine poker machines and Geoff and I decided that the trading of the business would not be materially affected if we sold one block, leaving us with six machines. Geoff and I understood that we would get at least \$200,000 for the sale of one block of three entitlements and this money would be applied to reduce the Bankwest debt.
22. Geoff instructed Ross to find a buyer for the entitlements. We understood that Ross had contact with Glen Cooper, a well known hotel broker who could find a buyer.
23. I understand that Ross spoke to Glen Cooper on 15 February 2011 and that Glen told him that it should be possible to obtain about \$230,000 plus GST. He recommended an asking price of \$250,000 plus GST.
24. Following that Ross wrote to Bankwest informing them of the proposal to sell the block of poker machine entitlements. A copy of the letter from McGlynn & Partners to Bankwest dated 16 February 2011 is an attachment to this submission.
25. Ross wrote a further letter to Bankwest on 16 March 2011 advising about progress of the sale of the poker machine entitlements. A copy of that letter is an attachment to this submission.
26. Glen Cooper secured a potential buyer for an amount of \$220,000 plus GST. A copy of Glen Cooper's email to Ross' partner, Stephen Hahn, is an attachment to this submission.
27. We then received a letter from Gadens Lawyers dated 14 March 2011, making a demand for repayment of the facility.
28. Stephen Hahn then replied to that letter by a letter dated 18 March 2011. A copy of that letter is an attachment to this submission. A copy was forwarded to Bankwest. In his email to Stephen Hahn dated 18 March, Glen Cooper suggested that a price of \$230,000 plus GST would be obtained if a Liberal Government was elected at the NSW state election the following week.
29. Gadens Lawyers then sent a further letter of demand to McGlynn & Partners on 1 April 2011. A copy of that letter is an attachment to this submission. I believe that on 4 April 2011, Ross received a call from an employee of Ferrier Hodgson. He was calling from the hotel to advise that Bankwest had appointed a principal of Ferrier Hodgson as receiver and that he was taking possession of the hotel. From that date I was not permitted to enter the hotel premises. Attached to this submission is a separate statement by Geoff which sets out his recollection of the dealings with Bankwest.
30. Following the taking by Bankwest of possession of the hotel, Ferrier Hodgson auctioned the property. Attached is a copy of the auction brochure by Ferrier Hodgson which includes the following quote,

“This is a unique opportunity to walk in and run a business that’s a good solid consistent trader currently run under full management. Note: the hotel has traded much better under previous management.”

I do not know the exact sale price but I understand that it sold for less than \$700,000. This left a debt of nearly \$700,000 due to Bankwest.

31. As the market value of a block of poker machine entitlements at the time Bankwest took possession was in the order of \$230,000 (exclusive of GST), the sale by the receiver of the entire hotel business realised little more than the value of the 3 blocks of entitlements. Had Geoff and I been permitted by Bankwest to continue to operate the business, had it been necessary, it would have been a commercially viable option to have sold a second block of entitlements and to apply that amount (presumably about \$230,000) in reduction of the principal of the debt to Bankwest. Retaining just three poker machines would still have generated reasonable revenue.
32. Bankwest then started Supreme Court proceedings against Geoff and myself. Judgment was obtained against Geoff. Bankwest then served a bankruptcy notice and creditor’s petition on Geoff. Following this Geoff filed a debtor’s petition under the Bankruptcy Act as he had no capacity to pay the debt or any part of it. The loss of the business has ruined both of us financially.
33. The hotel had obtained equipment finance to purchase poker machines. To the best of my recollection the amount borrowed was about \$130,000. We had paid all but one instalment when Ferrier Hodgson was appointed. Following the final payment of the finance facility, there would have been a reduction of about \$4,000 per month (being the monthly finance instalment). This amount would have been available to be applied towards principal and interest payments to Bankwest. Because the trading of the hotel had improved, it would have been possible to resume payments of principal and interest within a short period of time.
34. As yet I have not been served with a statement of claim by Bankwest. I understand that the amount claimed by Bankwest is in the order of \$650,000. I have no capacity to meet the amount claimed.
35. I now work as a truck driver in connection with the mining industry. I drive long distances between remote locations.
36. I am suffering from leukaemia. The leukaemia is in remission. However my health prognosis is uncertain.
37. I am living in a single rented room in a remote location. My wife is living with Geoff’s sister. If Bankwest pursues action against me, I will lose the house at Wongarah which I jointly own with my wife. My wife and I have been forced to rent it out in order to endeavour to save it.
38. Geoff is divorced and has primary care of his three young daughters. He lives in rented accommodation at .

Impact and conclusion

39. I believe that Bankwest's actions have ruined me financially. I face losing my home and bankruptcy if Bankwest continues its action against me. Given the action of Bankwest in obtaining a judgment against Geoff and then commencing bankruptcy proceedings (which led to Geoff filing a debtor's petition under the Bankruptcy Act), I see no method by which an amicable solution may be arrived at unless Bankwest:
- (a) discontinues the Supreme Court proceedings against me,
 - (b) consents to the setting aside of the Supreme Court judgment against Geoff and the setting aside of the bankruptcy, and
 - (c) provides some compensation to Geoff and me for the loss of the hotel business and our livelihood.

Attachments:

- (1) Letter from McGlynn & Partners to Bankwest dated 16 February 2011.
- (2) Letter from McGlynn & Partners to Bankwest dated 16 March 2011.
- (3) Email from Glen Cooper to Stephen Hahn dated 18 March 2011.
- (4) Letter from Gadens Lawyers to McGlynn & Partners dated 14 March 2011.
- (5) Letter from Stephen Hahn to Gadens Lawyers dated 18 March 2011.
- (6) Letter from Gadens Lawyers to McGlynn & Partners dated 1 April 2011.
- (7) Auction brochure for sale of property.

Yours faithfully,

PAUL NORMAN FRENCH



GILCHRIST BUSINESS BROKERS

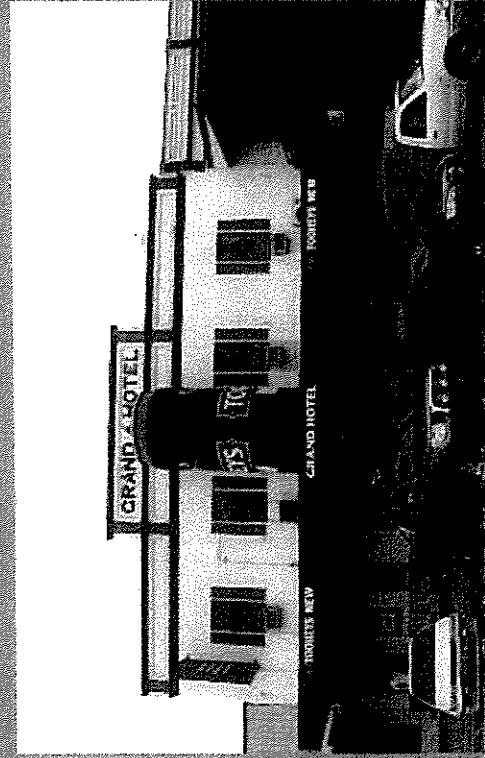
Hotel Industry Specialists

AUCTION

GRAND HOTEL, COBAR

Auction: Thursday, 16th June 2011

Venue: Sydney Morning Herald Auction Centre
Level 3, 115 Pitt Street, Sydney



- Weekly sales approximately \$14,500
- 9 Poker machines and TAB
- 13 Letting rooms
- Solid mining town
- Single bar operation
- Beer garden
- Potential upside

FREEHOLD VACANT POSSESSION

The hotel is located in the main street of the far western town of Cobar, a major centre located between Dubbo and Broken Hill. Cobar Shire is situated at the crossroads of the Barrier Highway and the Kidman Way in New South Wales and has excellent road, rail and air links to most of Australia's capital cities. With an area of 45,609 square kilometres, the shire is home to over 5,120 people, the majority of whom live in the town of Cobar – the Jewel of Outback NSW. The district has several mines, and the CSA mine is now one the largest producers of copper in the state.

This is a unique opportunity to walk in and run a business that's a good solid consistent trader currently run under full management. Note: the hotel has traded much better under previous management.

Under instructions from:



FERRIER HODGSON *Receivers & Managers*

**For more information or to arrange an inspection please call
Murray Gilchrist 0417 691 055 or Dan Maley 0439 691 055
Email: sales@gbb.net.au**

www.gbb.net.au

STATEMENT BY GEOFFREY MARK REIHER

1. My first contact with Bankwest in Dubbo was by word of mouth. My recollection is that they approached us when we were considering purchasing the freehold from the then freehold owners. Paul French (Paul) and I were considering approaching ANZ Bank for finance. We did not proceed with this because Bankwest approached us.
2. I first met a Bankwest officer in Dubbo. He took Jennifer Reiher (my former wife) and me out to lunch at a hotel in Dubbo.
3. We had a discussion about the potential purchase of the freehold. I informed the Bankwest officer that we needed about \$1,300,000 plus to purchase the freehold and clean everything up.
4. I informed him that I had had difficulties in the past with banks. When the going got tough they would not help us. The Bankwest officer assured me that they would look after us and that they were there for the long haul.
5. The application for the finance went very smoothly. There was always a question mark over Bankwest's exposure. The Bankwest officer told us that we were right at the limit of their lending guidelines. The Bankwest officer indicated that this would not be a problem. Bankwest approved a loan of \$1,350,000. The loan was for a term of 20 years with monthly payments of principal and interest.
6. We dealt with the Bankwest officer for about 12 months and then he was no longer at Dubbo. I think that he left the bank.
7. The Bankwest manager of the Dubbo branch took over the management of our account. He was the former Bankwest officer's boss.
8. My understanding was that after the former Bankwest officer left the bank, he was not replaced. From then on, we never missed a mortgage payment and things went reasonably smoothly. On a few occasions, Bankwest made a charge for late providing of financial information.
9. Jason Bartlett (Jason) of Crosbie Warren Sinclair handled most of the providing of financial information to Bankwest. I was responsible for the day-to-day management of the finances of the hotel.

10. Throughout the global financial crisis the hotel traded reasonably well. There was a mine closure by which about 700 miners were retrenched. That had a major impact on the trading of the hotel. Our bar trade increased by about 10% but our poker machine revenue decreased by about 70%. Throughout all this time we never missed a payment to the bank.
11. We managed to keep our trade creditors reasonably under control. We had to pay some off over a period of time but by the time the business closed when Bankwest took possession there were only a few trade creditors. There was money owing to the ATO and for superannuation and a small amount for the equipment finance for the poker machines. We had nearly finalised the equipment finance facility. To the best of my recollection only one or two monthly instalments of about \$4,000 remained to be paid.
12. I believe that Jason had a conversation with the Ferrier Hodgson representative who took possession of the hotel in which that person indicated that he was expecting that there would be major debts. As indicated above, this was not the case.
13. Prior to the appointment of the receiver by Bankwest, there was a number of conversations with new representatives of Bankwest. These were with bank officers in Western Australia. I remember the conversation with one of them went along the following lines:
- Bankwest officer: "We'll give you time to go and find new finance, sell the hotel."
14. In a subsequent conversation with that Bankwest officer, he said words to the following effect:
- "The bank doesn't want to have anything to do with you anymore."
15. There was another Bankwest officer whom I had discussions with. The conversations with him were along the following lines:
- "The figures do not add up, you're hiding creditors."
16. There were insinuations from him that the business was broke. This was not the case. The business of the hotel was improving as a new mine had opened and we were close

to finalising our equipment finance facility for the poker machines as described above.

17. I recall when I was in a meeting in Jason's office there was a conversation with the bank officer referred to in paragraph 13 in which he said words to the following effect:

"The bank wants out. Even if we put you onto principal and interest, we'll make the payments so great that you won't be able to afford them so you will default."

I believe that this showed bad faith on the part of Bankwest because we were then in a position to resume principal and interest payments by mid-2010 following the completion of the sale of the block of poker machine entitlements and the finalising of the equipment finance for the poker machines.

18. At the time, it appeared that the Bankwest officers had no idea about Cobar, nor any knowledge about the infrastructure in Cobar and the up and coming mine development. There was a proposal to invest about \$150,000,000 into a "decline" (meaning a mining entrance cut on a slope) into the main Cobar mine. Since that time, this has taken place. The airport at Cobar was closed for a couple of years. It reopened some time ago.

19. There was a mine, originally called the Endeavour mine (it has changed its name since that time) which closed down. That happened at the beginning of the global financial crisis. It was a direct result of the global financial crisis. About 600 or 700 miners were retrenched. That was when things started to go really bad. That mine is now back to nearly full production.

20. They are now opening new mines in the area.

21. It is a vast area, so any mine that is within about 100 kilometres would have an impact on the patronage of the hotel.

22. The hotel was competently managed by Paul. After the receiver was appointed by Bankwest, Paul was approached by other hotels to employ him. One hotel offered him a full-time management position.

23. As to the trading of the hotel, in the months between July and December 2010, the hotel made a profit of about \$60,000. For the whole of the prior financial year, the hotel made a profit of about \$10,000.

24. Until the receiver was appointed by Bankwest, I had worked my entire working life in the hotel industry. My parents were hotel owners. I am now working on a contract basis as a labourer. I live in rented premises at _____ I am the primary carer of my three daughters _____ aged 17, _____ aged 16 and _____ aged 11.

25. I am 52 years old. As I spent my entire working life in the hotel industry until the appointment of the receiver by Bankwest, I have had no other vocational training. I see no prospect of my obtaining employment other than as a labourer. Some years ago I had a damaged cartilage removed from my knee. Essentially, I have bone against bone in my left knee. I have received medical advice that I should have a knee replacement. I cannot afford it, nor can I afford to take any time off work because of my obligation to support my children. I suffer continuous pain in my left knee.

I declare the contents of this statement to be true, to the best of my knowledge and belief.

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GEOFFREY MARK REIHER

Date: