

# Scorse Pty Ltd ATF The De Michiel Family Trust

1<sup>st</sup> February 2012

## ADMIRAL NELSON MOTOR INN

The following is a general outline of the circumstances leading up to our purchase of the Admiral Nelson Motor Inn and the subsequent facts that emerged and events that occurred during the following 4 years. For the sake of brevity and conciseness, many of the finer details have been omitted. However these can all be provided whenever required, as we have all the necessary evidence to substantiate any allegations or claims we have made.

When we first inspected the property at the end of May 2007 we stayed two nights in one of the motel rooms. [REDACTED], the motel broker/agent did not accompany us during this inspection as is normal standard practice because he had to be somewhere else at the time. The vendors were a couple, [REDACTED] and their 40 year old daughter, [REDACTED] who had owned the business/property for eight years.. We met [REDACTED] briefly but it was [REDACTED] who was apparently responsible for the day-to-day operation of the motel who showed us around the property and with whom we communicated. After travelling literally thousands of kilometres around Qld, NSW, and Vic looking at numerous motels, we were immediately impressed with this property. The building, which was just under 10 years old, presented very well in sound condition both structurally and aesthetically; we liked the modern, contemporary appearance; it required no obvious major repairs; the fixtures and fittings, especially the carpets, were still in unusually good condition for their age and assumed usage. However the vendors would not allow us to inspect the owner's/manager's residence upstairs, the reason given that [REDACTED] was 'sick in bed with a bad back,' which we respected. We did notice a few strange inconsistencies; firstly the 'No Vacancy' sign was switched on at 6pm every evening, even though there were no cars in the car park, the reason given that they did not wish to be disturbed after that time! Also we were told that they normally charged \$70 for a Double room in the off-season – when we left we were charged \$100 per night – we still have the receipt to prove it! They also stated that they did not offer any room service breakfast, except perhaps a continental tray placed in the room the night before.

It was one of the few motels in the area not a member of AAA Tourism which meant that it had no official star rating and was not listed in any of the automobile clubs' national or state accommodation guides, one of the best reference sources which we, and many travellers, have always used to find motels while travelling around the country. As a result we had difficulty finding the property on that first visit. We also noticed that the motel directly across the road had several cars in their car park even during this quiet time of year. We concluded the property offered some real potential and a number of opportunities for improving its operation and efficiency.

Following this brief inspection visit, as had been prearranged months earlier, we promptly drove south to Sale in Victoria to help our friends run their motel for 2 months while the husband recovered from the surgical amputation of his leg followed by rehab and learning to walk with a prosthesis. Our entire purchasing and conveyancing process was conducted long distance by phone, laptop, email, and fax. As we had been living on Hindmarsh Island in SA at the time, after we finished and left our friends when they were able to fend for themselves, we had to drive back there to pack up our belongings, placed everything in a storage facility (in SA), and sold both our luxury

vehicles (albeit at a loss), which by some miracle we managed to do within a couple of weeks. As the motel we were purchasing had no garaging, we did not wish to leave these expensive cars sitting out in the open. We hired a small car, packed as many personal belongings into it as we could, including all our computer equipment and proceeded to drive back up to Nelson Bay hoping to spend a few days with the [REDACTED] to familiarise ourselves with the operation of the motel and the business. However, they told us not to arrive till shortly before settlement day as there was 'No Vacancy' for us. This all sounded very promising.....if only we knew! So we spent those few days in Sydney catching up with family and friends.

[REDACTED], the motel broker had previously sold us the lease on our first venture into the motel industry, the very lucrative and successful Narrandera Club Motor Inn in 2003, so we felt we could trust him to give us honest and accurate information. He had been in the industry a long time and is a Director of [REDACTED], one of the largest Hotel and Motel Broking firms in Sydney. We operated that motel for two and a half years, managing to improve the already excellent trading figures each year as well as making a nice profit on the sale. We enjoyed a very pleasant relationship with the landlords, and are still in email and phone contact with them. They have even been to visit us in Nelson Bay and stayed at 'The Admiral'. We treated this as our apprenticeship in the motel industry and even though we worked very long, hard hours found it very enjoyable and rewarding.

[REDACTED] admitted knowing [REDACTED] personally for many years, as they had previously been involved in the hotel industry in Sydney's Kings Cross area. We had been hoping to procure a freehold motel, to give us some bricks and mortar and real estate security, for under \$2 million as this would incur the maximum debt level a business of this size and ourselves could comfortably service. However [REDACTED] insisted we consider this particular motel, the Admiral Nelson Motor Inn, even though the asking price was \$3.2million as 'it was doing extremely well', producing an annual turnover of \$600,000! He gave us a copy of all the trading figures from 2003 to 2006 which had been prepared by the vendors' alleged accountants, [REDACTED] to substantiate his claims. While we were present in his office sitting across the table from him, he phoned [REDACTED] and negotiated the price down to \$2,430,000. By the tone of the conversation, it was quite obvious that he knew the person at the other end of the phone [REDACTED] personally. We have since spoken to other ex-moteliars who had previously looked at this property years ago with the view to purchasing it, so it had obviously been on the market for a long time before we were told about it. The reason we were not aware of it was that we had never considered anything in that price range during our property searches. [REDACTED] also indicated there was a certain urgency regarding the sale, as he had another party interested in purchasing the property who wanted to convert it into accommodation for 'family and friends coming over from India', and that we would need to proceed quickly with the purchase or we could miss out.

[REDACTED] also repeatedly stated that her family's association with [REDACTED] 'went back a long time' and that he was the only broker they would trust to sell the motel for them. The [REDACTED] were very reluctant to provide any further information or business details/trading figures for us to give to our accountant to perform the due diligence process. All we received were those basic Trading and P & L statements from their accountants, [REDACTED] (along with the usual disclaimer), and the same monthly turnover figures which [REDACTED] had already given us. From the figures supplied, our accountant, [REDACTED] of [REDACTED], indicated that on their face value alone, which was all that the [REDACTED] or [REDACTED] provided, he was happy with them so we confidently accepted his advice. However the [REDACTED] adamantly refused to supply any BAS's or other business records/books of account or source documents to substantiate these figures, normally an essential requirement for the prospective purchaser to pass onto their accountant as well as for the lending institution's assessment to determine any proposed financing. This resulted in our conveyancing solicitor, [REDACTED] and later his partner, [REDACTED] from [REDACTED] insisting the [REDACTED] solicitors, [REDACTED], insert a special clause stating that the vendors ([REDACTED]) would fully warrant the accuracy of the figures in the contract of sale, which they eventually

did, and Bankwest as well as their valuers, [REDACTED], accepted this as assurance of their accuracy. This appears as Special Condition 57 in the Contract of Sale. Our solicitors assured us that this would provide us with total financial protection to the full value of the asking price, if subsequently these trading figures proved to be incorrect/false. We have a copy of that original valuation report from [REDACTED] (for which we paid \$3,000) given to us by the mortgage broker [REDACTED] the principal of [REDACTED], who sourced the finance, which basically reiterates what [REDACTED] had already given us for free, some waffle, plus some details of recent sales of motels in the area which is information anyone can obtain by subscribing to RP Data for an annual fee of a few hundred dollars. That valuation report took only a matter of days to produce and was an absolute farce and an utter disgrace! That was the entire criteria that Bankwest used as the assessment basis for offering us a loan of \$1,822,500! The [REDACTED] would never have allowed that valuer to enter their premises, let alone access any of their (non-existent) business records, so how could that valuer ever have managed to obtain any additional information about the business? It was all simply guesswork for the sake of expediency to secure a quick sale. At that time BankWest was lending very aggressively as they were trying to establish themselves on the east coast, and were the only bank which would even consider our loan application.

We arrived at the Admiral Nelson Motor Inn in Nelson Bay 2 days before settlement day and again were given a motel room. We dropped off our hire car at Williamstown (Newcastle) Airport and spent the time familiarising ourselves with the local area. The [REDACTED] made it very obvious that they did not want anything to do with us so there was very little communication and certainly no sharing of business operating details etc. Also the motel was EMPTY and the 'No Vacancy' sign went on at 6pm every night – and the only car in the car park was *theirs!* We were beginning to become somewhat concerned by this stage, but thought that maybe they just couldn't wait to leave, as they had been there for so long.

Well nothing could have prepared us for what confronted us after settlement occurred that afternoon of 27<sup>th</sup> August 2007 and the keys were handed over. The [REDACTED] departed with the speed of a hundred gazelles without leaving anything at all, no customer/guest records of any description (the excuse being that everything was 'with their accountant'), no forward bookings whatsoever, not even a desk in the 'office', an empty filing cabinet, and they gave no forwarding address etc. We finally went upstairs to inspect the manager's/owner's residence for the first time. I think for the rest of our lives we will never forget that sickening feeling, nor the horror and shock we felt when we reached the top of those stairs. The stench was absolutely unbearable and the putrid condition of the living quarters was so disgusting it was beyond belief how humans could live in those conditions in a non-third-world country. We had already met their 2 dogs, but those dogs had carte blanche in that residence, with the result that they did EVERYTHING on the carpets, along the skirting boards, door jambs and lower edges of the walls, because their owners were too lazy to take them outside. Neither of us had ever witnessed anything so disgusting and appalling in our entire almost 60 years on the planet! The local, very experienced carpet cleaners, [REDACTED] and his son [REDACTED] (whom we continued using for the regular ongoing motel carpet cleaning) confirmed that they tried everything to clean and deodorise those carpets, but the damage was too far gone and impossible to remedy. Again we have all the photos as evidence. Of course, when we tried to contact the [REDACTED], they had already disconnected the only mobile phone contact number they had given us. There was no way anyone could live in that residence, and especially as we were so fastidiously cleanliness conscious (as I was once a dentist I am probably exceptionally a bit extreme in that area!) so we camped in the motel room closest to reception where we ended up living for 7 MONTHS, because everything continued on a downhill slide after that. We very quickly realised the glaringly stark horror of our situation and that we had become the unwitting victims of a horrendous con – we had bought a big 24 room empty motel building with NO business whatsoever attached, there were many nights when we had no guests, and a huge loan to service! These were about to become the De Michiel's darkest days. We had to draw on every possible fibre of inner strength and resolve we could muster to see ourselves through this, as we were not about to lose everything we had worked so hard for all our lives. It did not enter our heads that quitting was an

option at this point – instead we naively tried to see this as an opportunity to build up a business from scratch. It has never been in our nature to give up on anything we have every undertaken. We honestly believed that, given time, we would be able to pull this off despite being lumbered with this gigantic loan.

During those early months it was also the beginning of the never-ending saga of interest rate rises and the GFC, and we were starting the business with a blank canvas, literally from scratch, from zero. Even though we had an interest-only loan it was on a variable basis, so every month it meant a huge extra repayment amount. We had been assigned a Relationship Manager with Bankwest, [REDACTED], but he was extremely unhelpful and unsympathetic to our plight, and very difficult to contact both by phone and email. We often had to ask for deferment of repayments as cashflow was obviously a real problem. Whenever we asked what other options the bank could offer us during these difficult times until we could build up a reasonable clientele, he told us on one occasion that the bank was ‘trying to send us broke’. Fortunately we still had a few other assets which we were able to sell quickly, albeit at quite a loss, but the funds helped to keep the wolf from the door for a while. Also as we were legally old enough, we were able to access the money from our personal super fund to put back into the business. We even took large cash advances on our personal credit cards (we had managed to build up quite high limits over the years) to maintain the huge repayments. We are still paying off those credit card balances to this day.

As we accumulated sufficient funds, we organized the clean-up and overhaul of our residence upstairs. Firstly, the old carpets and underfelt had to be removed and dumped. Due to the dreadfully disgusting pong, this was an extremely unpleasant job even for the very experienced carpet layer from Carpet Choice from whom we were purchasing the new carpet – he indicated it was one of the worst he had encountered and it almost made him physically ill. The underlying concrete had to be thoroughly treated to eliminate the extensive damage caused by the dog urine etc, and eventually sealed before the new underlay and carpet could be laid. All the walls and ceiling etc had to be thoroughly scrubbed and repainted, and a new wardrobe was constructed, which Gilbert managed to do whenever he had a spare moment. After a few months we had our belongings trucked over from SA and we moved out of the motel room and into our beautifully renovated new residence.

It was a very expensive exercise implementing the property’s compulsory Fire Safety Measures (a requirement of the contract of sale, as the [REDACTED] did not have any of this in place), to prevent the local council imposing huge fines or closing us down, This enabled us to eliminate the need for the back-to-base monitoring system, and a substantial cost saving. It is incomprehensible how the [REDACTED] were able to keep the motel open for 8 years without having the necessary Fire Safety Measures in place – and the local council’s chief Fire Officer is exceptionally strict.

When we first arrived, there was plenty of crockery and cutlery, breakfast trays, tray mats, paper bags etc but no cooking utensils in the semi-commercial kitchen, apart from a commercial egg poacher and some old pots, as we had not brought any of our own. There was also no food whatsoever – Mother Hubbard’s cupboard was totally bare, because we had not done any shopping on our first day. The [REDACTED] had taken virtually everything they could use. On our first night we had 2 guests, both of whom ordered room service breakfast, so Gilbert took a taxi (as we had no car) at 7am to Coles, bought everything we needed, came back in the taxi, we cooked and had the breakfasts delivered to the guests’ rooms on time, and they were none the wiser! And made \$67 for our troubles!

In the first few weeks we were lumbered with an enormous repair bill for the commercial washing machine (the motel had it own onsite laundry).

We realized early in the piece that we would not be able to afford a car for a while, so we went without one for over 2 years. This meant taking it in turns to walk the 1.5 kms just to do our

everyday grocery shopping and lugging those heavy bags back up the hill. When it rained there was always the bus or the over-priced taxi in emergencies! One advantage however - it kept us very fit. Larger items were somewhat more challenging, but eventually one gets to the stage where any problem can be overcome with a bit of ingenuity and hard yakka.

Initially on closer inspection of the property, we began to notice many areas where improvements and work were required in order to attract prospective guests and encourage them to return. The most difficult aspect was to overcome the stigma and bad name attached to the property as a result of the damage the [REDACTED] had done in their 8 years. This was confirmed by other moteliers, the staff at the Visitor Information Centre in Nelson Bay, and a variety of tradesmen eg the plumber, electrician, and air-conditioner repair man. It was apparent that many of the locals knew that there was something weird about this property. We literally had to let the world know that the property was now under new management. This would take some time before potential, or even the odd previous guests realised this and were prepared to return. When they did return, it was always a similar tale – one repeat guest very flatteringly referred to [REDACTED] as ‘the rottweiler’!

This scenario was brought home to us when the original owners and builders of the motel, [REDACTED], came around and introduced themselves a few months after we took over. These people were moteliers from the country with more than 20 years experience and were now retired and living in Nelson Bay. They told us upfront that these people to whom they sold the property, the [REDACTED], were involved in various unsavoury and nefarious activities in the Kings Cross area (the name Abe Saffron was mentioned!). [REDACTED] was quite surprised that the bedspreads were still the original ones they had bought when they opened the motel nearly 10 years ago! There is no way these bedspreads would have survived the rigours and usage which a \$600K turnover would have produced over a period of 8 years during which the [REDACTED] were the owners!

Although this was only hearsay, it was later confirmed by many other people such as former managers of another motel, a number of local tradespeople who occasionally performed minor maintenance and repairs etc, staff who worked at the motel across the road and ‘observed’ the strange goings-on and who later worked for us, and even former ‘friends’ of the [REDACTED] who knew them personally. Almost from day one, we had a never-ending barrage of ‘people’ asking for or looking for them, both in person but mainly on the phone (many with very strange accents), everything from very official looking people in suits with clipboards, debt collectors hired by banks, detectives hired by financial institutions (I always asked where they were from) etc and the list goes on. I was forever redirecting mail with RTS. Even close family members ([REDACTED]’s own son [REDACTED] rang after 18 months looking for his father, and took some convincing that we were now the new owners! However the best one was when someone from their own lawyer’s office, [REDACTED], phoned looking for them. Eventually after more than 2 years we started opening their mail and phoning the institutions concerned (it was always some collection agency chasing a huge debt etc) to inform them that these people were no longer here. Initially we feared for our personal safety, as we wondered if some of these creditors they owed all this money might send out their own hitmen to kill them, and get us by mistake. Now we understand how those mistaken identity cases can happen. All this on top of all the financial stress we were under! From day one these people literally disappeared off the face of the planet, and to this day have not been seen or heard from!! And strangely enough, [REDACTED] who sold us the motel never once showed his face in the whole 3.5 years we were there, whereas in Narrandera he and/or his business partner, [REDACTED], would drop in quite regularly whenever they were in town. We know for a fact that they used to visit the other motel owners and ex-moteliers in Nelson Bay, so why not us????!!

Returning to Bankwest, when it came time for our first annual covenant’s review, unbeknownst to us our Relationship Manager, [REDACTED] had been given his marching orders, and we were literally left out on a limb with no communication from anyone from the bank. We sent ‘help’ emails through their online secure email system as by now the interest rate had gone up by more than 2% and our repayments were starting to cripple us. Then we received a long email from this

wonderful lady by the name of [REDACTED], who became our new Relationship Manager and she outlined the various options by which we could fix the interest on our loan for a much lower rate resulting in an ENORMOUS saving in repayments. This was like manna from heaven for us, so we immediately put this in place, with the result that we were able to continue to keep the doors open. However, the good times did not last, as [REDACTED] was promoted within the bank in 2010, and we were once again left without any point of contact. As a result we endured the compulsory three-year bank valuation during our peak holiday season (during the first week in January 2011) when it should all have been done in August or September 2010 for the annual review and roll-over in October 2010. If the bank had been doing its job properly we would not have had to go through this unnecessary stress during that extremely busy time. As the result of the last interest rate rise in November 2010 we were charged the higher rate as our loan automatically reverted back to variable, however, after much complaining on our part, we received a refund of the difference between what we were charged and what we would have paid on the lower fixed rate. This indicates that the bank admitted liability for its incompetence and negligence, and they apologized for the lack of communication which resulted in this situation. They also apologized for their lack of communication as they were experiencing staffing difficulties, mainly concerning their Relationship Managers, within the ranks, especially leading up to the take-over by the Commonwealth Bank and the changes they were implementing in the way they would be doing business. They were adopting a much less aggressive approach and tending towards a much more cautious and conservative lending strategy, which would impact very unfavourably upon us by viewing us as too great a risk to allow us to continue as we were.

We could not be expected to perform miracles when everyone else out there was struggling – why should we be any different and not be affected by the economic climate at the time? As we tried to explain to the bank, it takes 3 to 5 years to build a business from nothing to a viable stage, and we had only been at it for just over 3 years. Furthermore we actually started from further back than zero here! So when everything was taken into account we felt quite proud of what we achieved and deserved some recognition for our efforts to date. We felt it was very unfair that that this bank was putting so much pressure on us – we were doing the best (probably better than most going by the comments from some of our tradespeople and opposition etc) given the prevailing economic conditions and circumstances. We managed to raise the turnover from virtually zero to \$400K in less than 3 years, and during difficult economic times! People were out there during those days looking for bargains more than ever (they were also financially strapped in many cases) so we even had to reduce our peak holiday tariffs earlier than in previous years, because that was what the competition was doing, otherwise we would have missed out on a lot of business. There were definitely fewer people around during the 2011 holiday season than in the previous year. We had to contend with rising utility costs, and crippling labour costs as a result of the extra Public Holidays (the only country in the civilized Western world to have this ridiculous system of penalty rates). Also as a result of the ‘strong’ Aussie \$, there were fewer people travelling within Oz – they preferred to fly to America to sit in freezing cold snowed-in airports, rather than enjoying our beautiful temperate coastal regions! We had been told by a number of overseas visitors from eg Germany and UK, that they perceive the cost of living in Oz to be very expensive compared to their country. This was certainly not doing our tourism industry any favours to attract overseas visitors. But the banks were not interested in these things, as long as they can make a bigger profit this year than last year to keep their shareholders happy and pay their overpaid fat cat CEO’s even more ridiculous \$millions.

In these coastal holiday destination regions the weather is a huge determining factor – it can make or break a weekend or a holiday period. Perhaps the banks have special magic powers to control this phenomenon, but unfortunately we mere mortals have not discovered this secret yet! Many people generally make spur of the moment decisions to come and stay for a Saturday night – especially as we were only 2.5 hours drive from Sydney and 1 hour from Newcastle and most of the Hunter region. If the weather looked inviting in many cases we would fill up on the Saturday night.

Like most of the businesses here, we were still playing catch-up after one of the longest, coldest, wettest and quietest winters for many years. That was not an excuse, it was the reality.

Even before we took over the business we put ourselves online with the accommodation booking engine linked to the local Visitor Information Centre and which we had linked to our own website, and from day one set up our listing on Wotif.com, from which we were soon receiving over 30% of our bookings. We had complete control over the content on these sites. We took our own photos which we uploaded and updated regularly as we made any changes to the property. We aimed to have as much online exposure as possible especially where no cost was involved. Of course when we initially arrived, we firstly had to install Broadband ADSL because the [REDACTED] had no internet access of any description or anything resembling a computer on the premises! [REDACTED] had initially admitted that the business was not on the internet.

We joined AAAT and the first inspection resulted in a high 3.5 star rating which we eventually upgraded to Green Star Eco-friendly rating, because we implemented environment friendly practices, the only motel in the entire region to do so. We did not use any toxic chemicals etc and yet maintained a very high standard of cleanliness (our guests commented on this constantly) We were told by those who have known them for many years, that we had the best housekeepers in 'the Bay' – and we knew it! By the way we are still in contact with our wonderful team as we had become almost like a little family unit. We inherited 2 housekeepers from the [REDACTED], one retired after 18 mths, but the other one (who came from a corporate background) became our very trusted relief manager whenever we took our once a month day off. He also enlightened us on some of the aspects of the [REDACTED]' general 'activities'...He has even supplied us with his actual earnings during his employment with them – this information can be used to compare with the claimed amount of wages supplied in the original figures if required. We also know who their other staff members were and are confident they would be prepared to declare their true earnings if asked to do so. Wages are a perfect indicator of the true amount of revenue etc a business is generating as are utility costs such as electricity and gas, so it should be a simple exercise to determine what the previous owners' actual turnover would have been, with or without the help of an accountant. As we kept perfect records, our trading figures would be ideal to use for comparison purposes.

When we first arrived there was almost non-existent television reception because the [REDACTED] had not upgraded to receiving the signal from the new Gan Gan transmitter. After a year we installed the full digital MATV system with Foxtel, and later added another 3 new digital FTA channels, which gave our guests 16 channels for their enjoyment. We also lent DVD players and DVD's on request. We had replaced a number of the CRT TV's with new LCD flat screen TV's as we could afford to do so, and planned to complete the process in 2011-12, cashflow permitting. After about 18 months we also installed Wi-Fi broadband internet access supplied by a third party for the convenience of our guests.

During our first Christmas holiday season in 2007, we did not specify any minimum stay requirements, and accepted any and all comers. This was normal procedure in our previous motel in the country, and we did not know any better, and hey, we needed every \$ we could get our hands on. However, this created a huge workload for the staff, as well as having some very undesirable, messy guests cooking smelly curries etc in their rooms, and lots of noisy 'party animals' particularly over NYE, resulting in complaints from other guests. It was a nightmare. We quickly learnt that all the competition did minimum stays for a reason, Every year since and during the 2010 holiday season we specified a 5 night minimum stay for advance bookings and the result was the best behaved, happiest and peaceful time even with a full house.

Over time we had built up a wonderful regular repeat clientele who returned time after time, many requesting their favourite room, and we were more than happy to oblige. We had a particular affinity for seniors as they seemed to be the perfect guests who always enjoyed staying with us.

Early on one of the most effective improvements was to install a large awning over the main entrance (all the rooms run off an internal hallway). The entrance faces south which is the weather side, so that every time it rained accompanied with a bit of a southerly, a whole section of the hallway flooded and had to be constantly mopped. It is incomprehensible that the [REDACTED] put up with this for all those years. Of course it was a serious flaw in the original design of the building.

For the first year we did all our own motel laundry in the onsite commercial laundry. This meant that during that first Christmas/New Year peak holiday season in 2007, we would often still be in the laundry at 9pm or later washing, drying and folding sheets and towels. The existing machines were not the correct ones for a motel laundry as they were the type used mainly in laundromats.

When we outsourced the entire motel laundry, we sold those machines, and over time with Gilbert doing most of the labour, totally rebuilt and converted the old laundry room into a linen store room with a small workshop area, plus a separate guest laundry with new self-service coin-operated washing machine and dryer, plus new laundry tub and plumbing. We also replaced the old rusty run-down housekeepers' trolleys for the staff.

Initially only half of the motel rooms were equipped with microwave ovens, so we installed the remaining 12 with their own special wall-mounted brackets. We also placed irons and ironing boards in all the 24 rooms, as again they had none before. The [REDACTED] did not even offer complimentary biscuits in the rooms, so we sourced the best ones – everyone loves them!

Our wonderful local plumber, [REDACTED], replaced (a very costly exercise) all the taps in the basins and shower recesses in every room, and installed stop cocks under the basins so we can turn off the water locally allowing us to replace tap washers ourselves. We also replaced a number of air-conditioners, as we soon realized it was a waste of money to have them repaired because they eventually died anyway. Also in the early days, we benefited from the NSW government funded Green Alliance group supplying us with energy-saving shower heads and light globes for the entire motel.

The large illuminated motel sign had to have all the fluorescent tubes replaced early in the piece. The old PABX died one day and was replaced with a nice new modern one! After the first year we replaced the existing old dishwasher with a brand new Miele Professional semi-commercial model - very expensive but worth every cent.

We replaced a couple of beds, all the sheer curtains, most of the bedspreads and blankets, kept spare bar fridges, kettles, irons, hairdryers, toasters, clock radios etc. There were no spare appliances of any kind on the premises when we took over.

The irrigation system which used bore water, required extensive repairs as the [REDACTED] did not bother to maintain or repair anything. The landscaping was a constant work-in-progress but we purchased a heavy duty commercial mulcher/recycler and a chain-saw/hedge trimmer to assist in the tidying up process with Gilbert doing most of the work himself.

Even though we preferred to remain independent, in 2009 we decided to join the Golden Chain motels group. We realised it would obviously take time for the benefits of belonging to a chain to become evident, but we slowly began to notice quite an increase in guests seeking us out if they had a Gold Link card. As far as advertising was concerned, we utilised limited expensive print advertising only where we had found it to be the most effective, mainly in our local Visitor Guide and 'Free Map' as these were widely circulated.

Early in 2011 we had the large white Colourbond roof and the gutters professionally cleaned. This was the first time the building ever had this done. It had been a long search to find the right people to do the work and the result was spectacular.



The Reception area was given a huge lift with a sensational huge aerial photo adorning the formerly empty wall, taken by a top local photographer who also works his magic on one of the local cruise charter boats. A new blue lounge and sand dune design rug completed the welcoming bluewater seaside picture.

As a result of all these improvements and enhancements, we felt the property now presented very nicely, and this is evidenced by the number of complements we constantly received from our guests.

We also decided to obtain a couple of market appraisals from two other motel brokers/agents in January 2011, both of whom we had never met before, to see if it was worth trying to sell. We were very shocked and devastated to learn that after all the hard work, effort and money we have put into the property, the value was less than HALF of what we paid for it. One broker/agent even did the appraisal without leaving his Melbourne office totally sight unseen! We find this quite incomprehensible as we have a building which is insured for over \$2 million sitting on a block of land valued just last week at \$777,000 on which we are charged Land Tax and Council Rates. They based their entire valuation on the capitalisation of the net profit, without taking into consideration the building or land. How can this be correct? We had provided both the valuer, [REDACTED] from MVS Valuers (on behalf of BankWest) when he was here on 6<sup>th</sup> January 2011, as well as [REDACTED] from Asset and Management, at Bankwest Head Office with a copy of a document similar to the one you are reading now, to put them in the picture and show them that the reduction in the figures and subsequent capitalised valuation was not our fault, but they chose to ignore that information completely, as was evidenced by their response to the Valuation Report. They required a payment of \$500,000 by the end of March 2011 to bring the loan back into the 'original' LVR guidelines (which obviously never existed as the loan was based on fictitious figures). Of course as we had just explained to them, they knew that we had exhausted all our financial reserves and there was nothing left in the kitty. In our compulsory Business Plan we demonstrated that, given another 2 or 3 years and with the bank's ongoing assistance, the business should approach a turnover close to \$500,000, but they did not accept this. They also made the assumption that we would not be able to sustain Principal plus Interest repayments when they became due in December 2011. As a result BankWest called in their loan, which they had given to us based on false figures over 3 years ago. In total contrast to the original valuation by [REDACTED] at the time of purchase which only took a couple of days, this valuation took a full 5 WEEKS, with [REDACTED] constantly emailing and phoning and requesting extra information etc from us before he was satisfied that he had not overlooked anything. We were fully aware that, according to the relevant section in the Memorandum of Mortgage, BankWest was not obligated to provide us with a copy of this Valuation, but could do so at their discretion. However each time we politely requested a copy from them, they refused. To this day we still have no idea what that Valuation Report (for which we paid over \$5,000!) contained and this remains a constant source of annoyance and frustration considering we put our heart and soul into that property only to have it snatched away from us so that someone else can now enjoy the benefits of our hard fought efforts. We had planned that this would be our last business, to sell after about 5 years, and that would provide us with a comfortable retirement after nearly 30 years of owning and operating our own businesses. We never imagined in our wildest dreams that we would be the victims of criminal connen and fraud and end up losing everything we had worked for so long and so hard.

We find it incomprehensible that in a country like Australia injustices such as this can occur where we have no recourse because we put our trust in 'professionals' who are paid to provide a specialized service and give advice to consumers who rely on this advice to make informed decisions regarding the largest purchase of their lives. Where is the accountability? Where is the legislation that prevents these 'professionals' from hiding behind their disclaimers and indemnities? Since this has happened, we are constantly being reminded that we 'are not Robinson Crusoe' and are only one of nearly 10,000 insolvency statistics of 2011. That is really cold comfort and

definitely not what we expect in return for a lifetime's contributions. When we contacted Legal Aid (as we had only just obtained employment), we were told that because a business was involved they were unable to assist us. This whole experience has thrown a very dark cloud over our view of what we always considered the best country in the world in which to live. It is a real shame that the legal system in this country seems geared to help in proportion to ones' ability to pay.

We often thought of going down the litigation path very early in the piece, but as we were struggling so badly financially, there was no way we could ever afford to pay for legal fees. Also how could we sue the 'vanishing vendors' – half of Australia was looking for them. Those collection organizations etc have huge resources at their disposal, and if they could not find them, what chance would we have. And even if by some miracle we were able to find them, they probably would have nothing anyway, and how do you get blood out of a stone? So we felt we would not achieve anything except going broke a lot sooner. We reasoned that our best alternative would be to draw on our many years of experience and try to build up the business as best we could in as short a time as possible, but the constant pressure from Bankwest and with their response to the recent valuation, it became impossible to continue.

The receivers, Grant Thornton, came in and took over at the end of March 2011 (they even asked us if we wanted to work for them managing the motel until it was sold, but we declined – we were in a very fragile state emotionally by this time and just needed to get away from the place as far and as quickly as possible). We visited a solicitor in Sydney (██████████ from ██████████) with whom we had a number of dealings since the 70's, but he had recently retired so put us in touch with one of his partners (██████████) who specialized in Insolvency and Liquidation. For a fee of nearly \$10K, all she could suggest was that our original conveyancing solicitors, ██████████ and ██████████ should have told us to walk away in the first instance once the vendors could not produce any BAS's. She and ██████████ also told us to immediately stop making any further interest payments on the loan as the devaluation had now put us in default. We must state quite emphatically here that during our entire 3.5 years in the motel, in spite of everything, at no time did we ever default on a monthly interest payment - we occasionally asked for 1 or 2 week deferments, but always managed to meet the payment within the month. BankWest can easily verify that from their records. When we asked ██████████ about instigating any legal proceedings she indicated that they would not even look at it for less than \$1M upfront! In other words they were not interested, firstly we believe because they do a lot of business with ██████████ (!) and they would not wish to jeopardise that lucrative business relationship and she also admitted knowing ██████████' solicitor, ██████████ quite well. She suggested we simply file for bankruptcy if the bank came after us for the shortfall on the loan after the property is sold. This is something we steadfastly refuse to do, as we have recently completed the Resident Letting Agent course in Qld, and a bankrupt cannot hold the necessary licence. This will allow us to manage and relieve for Management Rights properties in Qld and NSW and help us get back on our financial feet slowly. We have already done a short relieving stint in Broadbeach, and really enjoyed it. We are now currently working as Resident Managers for ██████████ in Melbourne – it is a permanent position for as long as we want to stay. These jobs are ideal as our accommodation is included, very handy when one does not own a roof over ones' head.

After we left the motel at the end of March 2011, we were fortunate to have some wonderful friends who took us under their wing and helped us get through this living nightmare and feeling of being to Hell and back a number of times. The stress of maintaining a brave and cheerful face while falling apart on the inside is quite unimaginable. We even had to seek help from Centrelink (and not without a bit of a battle because we have a Company), something we never imagined we would ever have to do. We have since heard that the receivers sold off the motel in July for half of what we paid for it – and would you believe it, again by ██████████ getting a second wrongful bite at the commission! To date we have not received any word from BankWest as to what their intentions are regarding the shortfall on the loan. We were contacted by ██████████ the debt collector acting for BankWest in October 2011 who informed us that we owed BankWest a shortfall of

\$830,000. Apparently the Receivers had undersold the property by a considerable amount in order to secure a quick sale, even though they staunchly assured us that they were not allowed to do so! [REDACTED] asked us to supply a Statement of Position which would indicate to BankWest (and their shareholders) that we do not have the means to ever repay this shortfall during our lifetime as we are now in our sixties and do not have the necessary timeframe in which to earn enough money to enable us to do so. If they forced us into bankruptcy what useful purpose would that serve and what benefit would they derive from that?

Both of us have always devoted a great deal of effort in maintaining excellent health and fitness, but the constant stresses of being in such a devastating situation, resulting in both of us becoming quite ill in 2011. Gilbert developed a very debilitating respiratory condition and Sylvia developed an extremely painful attack of Shingles. As we were in survival mode financially at the time, both of us had to keep working and were unable to take any time off to rest and recover properly. Fortunately we have both recovered our health now, but those months were some of the most difficult we have endured in our entire lives – and we have definitely had our share of difficult times over the years.

We relied entirely on the ‘expert’ information the motel broker/agent ([REDACTED]), the [REDACTED] accountants ([REDACTED]), our accountant ([REDACTED]), and our solicitors ([REDACTED]) gave us, and BankWest relied on the information their valuers ([REDACTED]) gave them and by doing so have ended up in the mess we are in now. Is it really possible that all these parties can hide behind their disclaimers and indemnities and get away with their misrepresentations and deceptive conduct? [REDACTED] should be held accountable for his actions as he earns a huge commission on these sales (twice in this instance for the same property), so we feel this is a good starting point. Could this be the reason why he had not been game to show himself for the whole time we were in Nelson Bay – but visited other parties while there. [REDACTED] also stopped sending us their calendars which we used to receive from them regularly every year in Narrandera. We also maintain that [REDACTED], in their original Valuation Report, on which the bank based its loan, failed in their fiduciary duty of care. And nothing would give us more pleasure than taking Bankwest to task and making them accountable for their actions!

Do we have any recourse regarding this matter, and if so, what would be involved? We have no intention of throwing any more good money after bad where legal fees are concerned, only to be dragged through a quagmire for years to come with no favourable solution at the end. Or is it just best to cut our losses and put the whole dismal saga behind us and get on with the rest of our lives, thereby giving the crooks another win so they go ahead and do the same to some other unsuspecting sucker?

Sincerely,

**Gilbert and Sylvia De Michiel**