

Submission to Senate Inquiry

"Effects of the GFC on the Australian Banking Sector"

14th May 2012

Economics References Committee

PO Box 6100

Parliament House

Canberra, ACT, 2600

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.

My wife and I had two property investments, namely; a) 3 properties in Malvern and (b) 3 titles in Dingley which were agreed to be developed with a 4th title being our matrimonial home adjacent to the above three Dingley titles.

Introduction:

Bank West aggressively pursued our business both in Malvern and Dingley. Malvern-A Bank West manager through the vendor of the site and the vendor's valuation arranged the loan for completion of acquisition off the plans.

Detail:

The purchase of the Malvern properties had been committed 5 years prior to settlement with \$120,000 deposit on each of these units. My wife and I had intended to provide each of our 3 children with a unit.

The vendor instructed valuation through Charter Keck (CK) dated 16/4/2007 on the 3 Malvern properties was \$4.6m

A further valuation was made by CK dated 25/9/2007 as the Malvern property was nearing completion . As a result a further \$290,000 was

advanced on the Malvern properties which was then transferred to the Dingley properties settlement. A total of \$3,550,000 was advanced against the above \$4.6m valuation.

On the Dingley properties \$1,670,000 was advanced against the purchase price of the 3 titles (excluding stamp duty and costs) of \$1,600,000.

My wife and I had agreed with the bank's full knowledge to include our adjacent home in a development of the 3 Dingley titles plus our home.

The anticipated resulting profit from the total development is the ONLY commercial reason for allowing for a 100% borrowing to occur

Malvern

Commercial Advance Bill Facility \$3,550,000 (19/12/2007)

Dingley

Variable Rate Facility #1 \$720,000 (29/1/2008)

Variable Rate Facility #2 \$660,000 (11/3/2008)

Transfer from Malvern facility \$290,000 (21/11/2007)

Total Dingley Facility \$1,670,000

The Bank West manager worked with accountants and the vendor's valuation on Malvern and did not instruct their own valuation.

In hindsight these valuations (\$4.8m) proved very inflated. 5 auctions were held in all to sell 2 properties ourselves and one as mortgagee in possession. These gross sales totalled \$3.02m. The sale that was made by the bank was in the full knowledge that an offer had been received in the sum of \$2.2m from a HK party whose substance can be verified by our lawyers. This was a shortfall ignoring costs of \$2,200,000 less \$1,080,000 sales proceeds = \$1,120,000.

On the Dingley properties

- a. 7/8/2009 a telephone call was made between The J/V developer (JVD) and the Bank West manager (BWM) that they were prepared to proceed. JVD also stated that his investor no longer wanted to acquire the Dingley company as it appeared that BankWest would

not agree to the offer requiring a full and final settlement of Dingley's liability to BankWest. He felt that such a share purchase would leave Dingley with the differential liability. He was, however, happy to proceed and to pay the stamp duty etc consequential to that.

- (b) On 13/8/2009 an email was sent from The J/V developer requesting documents be sent to our lawyer. In addition a formal document was requested to conclude the residential home agreement with Fravals.
 - a. On 14/8/2009 documents were emailed to our lawyers to enable him to complete the Vendors Statement
 - b. 22/08/2009 telephoned our lawyers office and it was confirmed that there was one piece of information relating to one of the utilities and he expected this in the next few days.
 - c. On 25/8/2009 a Receiver was appointed.
 - d. In shock of the appointment of the Receiver The J/V developer telephoned first The Bank West manager and then the Receiver. They stated that they needed to get a valuation and showed little interest in completing the contract of sale but more interested in running up their fees (amounting in the end at expense to \$242,126.) say this was reckless and not acting to maximize the proceeds under the facility.
 - e. A letter dated 16/11/2009 from (for the Receiver) confirming his knowledge of the development plans at the time of his appointment. He requested provision of the plans for the overall

development. The J/V developer followed with a telephone conversation telling that, following his treatment by the Bank and the Receiver and after real dollars had been spent he certainly had no intention of just handing them over as they had been paid for and belonged to him.

- f. The auction was carried out on 5/12/2009. The Receiver's description on their sale brochure misrepresented that the site was being sold as a "Premier Development Site" which it was not sold as each of the three titles were sold to three different parties precluding any development in pursuant to the agreement reached between the and the J/V developer on 26/5/2009.

The actions of the bank totally ruined our lives causing us to lose \$1,140,000 on the sale of the last of the 3 Malvern properties ; \$2,500,000 on our agreed Dingley Joint venture profit and the loss on our residential home in Dingley which had been agreed at \$1,000,000.

The bank also caused losses and damages by forcing us into bankruptcy when I relied on my position as Chairman of a public company to derive income.

Conclusion:

Throughout we worked with Bank West with our utmost strength to sell down 2 of the Malvern properties at 4 auctions, find a buyer in Hong Kong who the bank discounted but made no serious attempt to contact.

On the Dingley property Bank West lent more than 100% of the purchase price on the commercial grounds that the property was to be developed in conjunction with the matrimonial home. They put in a Receiver into the property owning company even though they knew of the agreement reached with the J/V developer and then proceeded to work with

the Receiver to undermine the auction .We are aware of an independent developer who offered a figure greater than the 3 titles individual combined sales which was refused. This meant that the J/V plan to develop the 4 titles was no longer possible as they were now in the hands of 4 separate owners. The three titles have subsequently received planning permission to build multiple houses separately.

In hindsight, it is clear that the Bank knew that they were indemnified by the British Government in the HBOS sale if they could achieve a bankruptcy outcome which they did. We spent over \$250,000 in mediation (At which the Bank did not budge from the gross Writ figure) and attempts to show that costs were wrongly charged without due authority but were advised that we would never win against a bank.

Yours Faithfully,

Any attachments:

Can follow with documents