Cottage Holdings Pty Ltd (Mr and Mrs P. & L. Randles) and ANZ Bank

Funding approval for development at 20 Norfolk Street Fremantle and refinancing of Bankwest loan with ANZ.

Summary of events

June 2010 to December 2010

The events around this period are important in determining whether a default notice issued by ANZ Bank (ANZ) against Cottage Holdings (Cottage) was justified in light of evidence supporting the belief that the actions of an ANZ Bank officer attributed to the notice's issuance. ANZ relies heavily on their claims that Cottage Holdings defaulted with respect to non-maturity of milestones relating to the funding conditions.

Cottage Holdings claims that the default occurred as a result of the actions of ANZ officer and ANZ's nominated quantity surveyor,

During June 2010, Cottage made an application to ANZ for funding to refinance out of an existing loan with Bankwest. This application included a request for further funds to construct a council approved multi apartment development in Fremantle, Western Australia. Prior to any approval, ANZ advised of a number of conditions it required be met. One stipulation was for ANZ's chosen quantity surveyor, to assess and approve the worthiness of the proposed building company, Condil Property Developments (Condil).

On 8th June 2010 issued a report (available on request) to ANZ asserting that Condil was suitable to carry out the works program and that the company was appropriately registered. ANZ then approved the loan of $10,381,000 to Cottage Holdings Pty Ltd (Cottage).

Following the ANZ settlement of the Bankwest funding, Condil proceeded to carry out preliminary activities such as demolition of existing infrastructure, engineer drawings etc. This initial work was undertaken within the terms of the loan. One such term required the pre-sale of a fifth apartment. It should be noted that construction of the apartment complex itself had not commenced at the time of the payment by ANZ to Condil. At this point building works had been limited to preparatory works outlined above, not actual physical construction.

On 5th October 2010 Condil submitted its first draw-down claim to for the aforementioned preliminary works which were completed between July 2010 and October 2010.

On 15th October 2010 approved the builder's first draw down claim and forwarded that approval to of ANZ, plus a copy to Cottage.

On 26th October 2010 notified ANZ and Cottage in writing that he had discovered that Condil was in fact not registered as a building company in Western Australia and therefore not suitable to carry

out the works program. The provision of a loan by ANZ to Cottage was contingent in part on proof of registration, proof that – ANZ's chosen surveyor – had previously provided.

On 26th October 2010 ANZ and issued an instruction to Condil to rectify its building registration before further funding was provided by the bank.

In addition to the builder's registration, the other conditions ANZ imposed on the loan all centred on actual physical construction of the apartments commencing (rather than just preparatory work). For example, one condition required "one remaining residential unit to be sold within three months of *construction commencing*, but no later than 30th November 2010" [emphasis added]. A second read "The Harvest Street residence [the home of Cottage directors, Peter and Leonie Randles] and vacant land to be sold and settled within four months of *construction commencing*, but not later than 31st December 2010" [emphasis added]. All conditions clearly inferred that the builder not only could commence construction, but needed to if the loan terms were to be met. However, construction did not commence due to the builder not being paid for the preliminary preparatory works. In effect, it was a case of the chicken and the egg.

During late October 2010 Cottage was in negotiations with two interested buyers for one of the remaining units in the development (the fifth pre-sale, required under the terms of the loan). However, due to the builder's deficient registration status and ANZ's order to rectify that registration before funding flowed, all negotiations were temporarily suspended as Cottage was now unable to nominate a completion date for the project.

On 9th November 2010, Condil attained a Master Builders' Association (MBA) registration certificate, as required by ANZ, to rectify its deficient registration status resulting from incorrect advice to Condil by . The directive to Condil to register with the MBA was through and ANZ. and ANZ were immediately notified, the same day, of the issuance of the certificate and copies were sent to both.

By mid-November 2010 Condil had still not been paid and frantic efforts by the company to be paid were being ignored. Condil continued to contact who ultimately advised by email that he was moving away from the situation until further notice by ANZ.

Given this situation, Cottage's obligatory milestone condition to affect the sale of a fifth apartment by the end of November 2010 could not be achieved, pending the outcome of ANZ's release of further funds. This also applied to the sale of the owners' residence which was to be sold by no later than 31st December 2010.

Effectively, the situation was similar to a train being forced off the track.

On 17th November 2010 Condil issued a letter to Cottage advising that no further work on the development would be carried out until payment of the first draw down had been received.

By 30th November 2010 (the date of the maturity of the first milestone condition to sell a fifth unit), Condil had still not been paid. At the same time, Cottage was unable to proceed with potential purchasers of the remaining units as the development was effectively suspended.

On 9th December 2010, ANZ issued a default notice to Cottage claiming that a fifth unit sale had not materialised by the agreed milestone date of 30th November 2010. No further communication was forthcoming from of ANZ until 30th December 2010.

On 30th December 2010 ANZ advised Cottage that the bank would now foreclose on the company, as it had not acquired two unit pre-sales as stated in the milestones.

Eventually, during mid-March 2011, ANZ issued to Cottage a letter of variation to the loan that outlined the reason for the bank's actions and proposed alterations to the loan terms. At this time, foreclosure was withdrawn. The changes to the terms were being demanded by ANZ as a result of Cottage's alleged default status that had occurred in November/December 2010. (As outlined above, this alleged default was the failure of Cottage to meet one of the loan conditions (the pre-sale of a fifth property) which itself only occurred because ANZ withheld funds.) The letter of variation also advised that ANZ would pay Condil provided Cottage released control of its shares in an unlisted mining Company, Bullseye Mining Ltd (Bullseye). The quantity of shares ANZ sought was worth between $1.6 million and $1.8 million.

It should be clear that Cottage was in no way responsible for any default. Indeed, at every point the directors actively and vigorously attempted to comply with ANZ's conflicting and confusing instructions, to no avail.

Cottage asserts that it was the actions (or inactions) of ANZ and ANZ's own chosen surveyors, , that compromised the entire development from day one. Cottage was forced into a position that ultimately resulted in ANZ taking possession of both the development site and other property, including the owners' residence and shares. ANZ therefore took legal control of all assets of Cottage Holdings and its directors.

Summary of events

January 2011 to May 2012

The key point of concern during this period relates to what we believe to be grossly misleading and deceptive conduct deliberately perpetrated by ANZ surrounding its actions in acquiring shares in an unlisted mining company, Bullseye Mining, owned by Cottage Holdings Pty Ltd.

Following the non-payment to the builders, Condil, of the first draw down payment for preliminary works completed up to 5th October 2010, ANZ sent an e-mail to Cottage on 1st February 2011. In that email ANZ confirmed it had agreed to pay Condil the outstanding money, subject to some revised terms and non-onerous conditions being issued in a loan variation letter.

The variation letter refers to the asserted default status of Cottage and seeks to take a formal charge over shares owned by the directors of Cottage. The instruction also refers to a new tripartite deed to be executed prior to funding and payment of the builder's first draw down.

(By way of background, in the early stage of application for the ANZ loan, on 27th February 2010, the directors of Cottage mentioned to ANZ officer that it owned shares in a publicly unlisted mining company in the hope it would assist the bank in approving the loan. replied

'Unfortunately we cannot consider shares in an unlisted company as suitable collateral for the $400,000 shortfall in equity'.

It should also be noted that the intended tripartite deed was not legally executed, as Cottage director Leonie Randles refused to sign the deed owing to a mistrust of ANZ's intentions and lack of regard for due process.)

On 1st February 2011 the ANZ representative in control of our loan changed from

On 14th February 2011 ANZ issued a copy of the variation letter which refers to the release of payment to Condil. This payment was to be made once the letter was executed and included further reference to the inclusion of the aforementioned shares as "new securities". The unlisted share securities totalled 8.6 million with a net value of approximately $1.6 million to $1.8 million.

On 16th February 2011, both Cottage and its accountant attended a meeting with at ANZ head office in Perth to discuss a list of concerns relating to the proposed variation letter. One of those concerns related to Cottage retaining the proceeds of the sale of three million of its 8.6 million shares so that pressing creditors of the company and its directors could be paid.

On 17th February 2011 advised Cottage by email:

> *"Just wanting to confirm receipt of your phone message regarding sale of shares and interest shown by the builder in buying one of the remaining units. Both good news. Can you prepare an updated copy of your personal assets and liabilities including also a breakdown of overdue or pressing creditors. We will also need an income and expenses schedule detailing your ongoing personal living expenses".*

The same day also advised that the request to retain the sale proceeds of the three million shares was under consideration with the bank's credit department. also requested a breakdown summary list of the amounts owed to the pressing creditors.

On 18th February 2011 an e-mail was received from , advising:

> *"Personal financial position to be updated, with a view to determine the level of share sale proceeds released to cover pressing personal commitments and reasonable forward living expenses".*

On 24th February 2011 Cottage received an email from advising:

> *"I just wanted to let you know that we have received approval in principal for the release of the three million Bullseye [Mining] shares. Also, the sale of one of the remaining units to the builder should be fine. We will need to run the contract past our solicitors but should be OK subject to one or two clauses. When it gets to the offer stage, please provide us with a copy before the final acceptance so we can advise wording for additional clauses".*

ANZ was also notified that of the total of 8.6 million shares, 2.4 million had already been allocated to the previously contracted buyers of the four units pre-sold. These shares were part of the offer and acceptance

process between Cottage and the four buyers and were provided as an added incentive to gain the pre sales given the purchases were made 'off the plan'.

With the bonus 2.4 million shares allotted to the pre-sale buyers, the remaining shares available totalled 6.1 million. The bank held copies of all of the executed contracts to purchase the units and was therefore clearly aware of the (2.4 million) shares committed to the buyers of the units.

It should be noted that the conditions of the new variation letter were extremely onerous in as much as Cottage only had until 31st March 2011 to sell (a) a fifth unit; (b) the owners' residence, and; (c) vacant land adjacent to the residence. This time factor represented a mere three weeks to attain the ordered sales. The condition outlined in the variation letter read:

> *"The properties at to be sold subject to unconditional contract of sale, acceptable to us in our sole discretion by no later than 31st March 2011".*

On 2nd March 2011, ANZ was notified that Cottage had secured the pre-sale of a fifth unit. The following day Cottage sent an email to (ANZ) advising of a new contract of sale for $1,400,000 this, the fifth pre-sale. The message by fax was:

> *"I am faxing the documents discussed yesterday (ie. new contract of sale; signed sunset clause). Also, Cottage Holdings' remaining saleable shares in Bullseye Mining Ltd is 6.1 million. Have collected the credit card statement summaries. The total cards owing is $190,402. The majority of this relates to the Norfolk Street Development set up costs (ie. architect fees, surveyors, submission fees). With the upcoming sale of shares, we intend paying all of the amounts on the cards".*

The same day emailed Cottage stating "Have received the offer and acceptance and signed sunset clause. Are you faxing the credit card statements as well? If so I will keep an eye out for it".

On 4th March 2011, an email was forwarded to reminding the bank that "Only 3.1 million shares are available as security and should be noted as such".

On 6th March 2011 ANZ issued a standard shares and securities mortgage deed to Cottage. Upon reading the contents it was noted that the share deed stated that the amount of shares to be secured in favour of ANZ was the full amount, being 8,532,144, rather than the previously advised available amount of 3.1 million.

Cottage immediately telephoned advising him that the company could not sign a deed which showed that all of the shares where to be charged as security under the securities mortgage. verbally advised that it was okay to sign the deed covering all of the shares as the credit department had already approved release of the three million shares for creditor payments. also advised that it was "simpler" to do it that way, as the payments to creditors can be controlled by the bank and the bank felt more comfortable controlling disbursements of share sale funds.

As Cottage had already received approval for release of the sale proceeds of the three million shares, plus Cottage had notified the bank *in writing* that 2.4 million shares were already obligated to the pre-sale buyers, all seemed fine. Cottage trusted explanation.

On 9th March 2011 sent an email to Cottage which stated as follows:

"The Share Certificate is not signed. When can we obtain the original signed copy? I note that the quantity of shares is just over 8.5 million, which is 2.4 million above the quantity you stated as available for sale. We will require control over all of the shares, not just the saleable ones. We are able to release the shares progressively, as and when they are sold, but we need to control the disbursement of funds.

The same day Cottage emailed advising that the shares available for sale amounted to 6.1 million. Cottage further advised "As previously discussed, and in line with your letter to us dated 24th February 2011, Cottage is currently negotiating release/sale of three million shares".

A second email was sent to that same day and stated:

"The builder is in need of his outstanding payment. We have returned the signed variation letter to you yesterday. We would appreciate the release of this outstanding payment to the builder as he is now pressing us daily in regards to his payment which was first presented to the bank in October 2010".

responded the same day:

"We still need the share certificate or evidence of your shareholding in Bullseye. Once received we can issue the share mortgage which needs to be signed and returned to us before release of the builder's payment."

On 10th March 2011 emailed Cottage and advised:

"We expect to issue the share mortgage later today. It will be over the full 8.5 million shares, with a separate letter to follow, agreeing to release the 2.4 million shares at the time of settlement".

Later that day secretary, , requested (in writing) a list of creditors of Cottage and its directors. The itemised list totalled $190,520. This information was emailed back to the same day. Further to the pressing creditors' list, Cottage had an outstanding debt to the Australian Taxation Office (ATO) of $350,000. The proceeds from the sale of the three million shares were to pay both the creditors plus an agreed partial payment to the ATO. This agreement with the ATO was entered into with full disclosure to ANZ.

On 11th March 2011 Cottage directors signed the variation document. However, the new tripartite document was not executed as one of Cottage's directors (Leonie Randles) refuses to sign as a result of concerns in regards to ANZ's intentions and previous conduct.

On 11th March 2011 – nearly six months from the builder's lodgement of the claim – ANZ paid Condil its first outstanding draw down payment of $155,280.

On 24th March 2011 ANZ emailed Cottage requesting "How the sale of the 3 million shares is progressing, and the sale of the home of the Directors".

As noted above, contained within the variation document was a clause referring to a further pre-sale (ie. the fifth) of one of the units being required by 31st March 2011. This document also included the unconditional sale of the home of Cottage's directors by the same date. A new pre-sale contract of one of the remaining two units (ie. the fifth pre-sale) was affected on 4th March 2011 for $1,400,000. A copy was forwarded to ANZ the same day.

On 5th April 2011 Cottage received a notification from (ANZ) stating that he had sent a letter regarding failure to sell the owners' home by 31st March 2011. also advises that he was informed that the builder was intending to terminate the construction contract.

Cottage did not receive any notice regarding ANZ's acceptance or otherwise of this new pre-sale until 21st April 2011, some three weeks beyond the variation letter milestone date requiring the sale. That letter advised of ANZ'z rejection of the sale on the basis of insufficient deposit provided by the apartment's buyer to Cottage. Subsequent to this situation, Cottage received notification that it was in default by not affecting by the fifth pre-sale by the milestone date of 31st March 2011.

On 11th May 2011 emailed Cottage noting that the tripartite deed has not been signed by Cottage director Leonie Randles. As stated above, Leonie would not sign the tripartite deed which legally rendered the variation letter invalid.

17th May 2011 sent a letter to Cottage directors advising that Cottage is not to attempt to disperse any of the 8,532,144 shares in Bullseye Mining. also sent a directive to the registered share managers, Aspen Corporation Pty Ltd, advising the same instruction.

On 18th May 2011 Cottage advised that it had already arranged a buyer for the sale of one million shares for a consideration of $140,000. subsequently intervenes in the transaction of the sale of the shares and advises Aspen to send all of the proceeds of the sale of the one million shares to the benefit of ANZ Bank.

On 26th May 2011 Cottage then receives another default notice from ANZ for arranging the sale of the one million shares allegedly without consent. further states:

> *"I also wanted to let you know that we are still in discussions with our credit department and legal teams in Melbourne regarding your request for the release of funds from the sale of the one million shares in Bullseye Mining Ltd. In the meantime we have applied $120,000 of the funds towards reducing your debt with ANZ. The remaining $20,000 is being held to meet selling and marketing costs of your properties. We anticipate completing the asset sale agreement in the coming days and will discuss this with you in early course".*

All future sales proceeds from shares sales were retained by ANZ.

On 15th June 2011 Cottage sent an e-mail to outlining the following:

> *"Our initial request, in February 2011, was to retain and sell three million shares to be able to finalise outstanding pressing creditors. This request was approved by your credit department. We expect further share sales shortly and respectfully request that we may be able to clear the debts as previously outlined".*

On the same day responds:

> *"The previous discussion around disbursement of share sale proceeds was when we were still working towards development proceeding. As we are no longer able to fund the project, we need to ensure any asset sales are first directed to reducing ANZ debt".*

On 7th July 2011 ANZ ( ) issued Cottage and its directors with an asset realisation document (ARA). This document outlined ANZ's intention to sell everything owned by Cottage and its directors.

As a result of the deceptive and misleading conduct by ANZ with respect to the share sale proceeds, Cottage and its directors were unable to pay its outstanding pressing creditors, who in turn lodged bad credit notifications with credit reporting agency, Veda. These bad credit ratings resulted in Cottage and its directors not being able to refinance out of ANZ. Several applications to refinance with other banks where fully supported up until the credit rating was discovered. This impairment meant that any attempts to regain a foothold were entirely fruitless.

On 28th July 2011 Cottage sent an email to ANZ outlining the negligence of the quantity surveyor, during 2010. Cottage asked whether ANZ could provide to the directors a copy of the bank's original instruction to to ascertain the worthiness of the builder, Condil, to carry out the construction works program. This request was denied.

On 29th July 2011 ANZ demands that Cottage directors sign the ARA which included a suspension clause which outlined that the bank would be immune from any future actions against it in relation to this matter. This document was signed under duress (and annotated as such), including by way of threats made by . The document also refers to a clause which prohibits Cottage and its directors from seeking redress through, or support from, the Financial Ombudsman Service (FOS). Notwithstanding this, the directors of Cottage lodged an appeal with the FOS claiming misleading and deceptive conduct by ANZ and in regards to the non-release of the sale proceeds of the three million shares. The FOS subsequently advised Cottage and its directors that because of the suspension clause imposed by ANZ it was powerless to assist.

On 22nd September 2011, correspondence from the FOS to Cottage directors reads:

> *"I refer to your dispute with ANZ Banking Group. ANZ has provided me with a copy of the asset realization agreement dated 29th July 2011. The asset realisation agreement, signed by you, says at clause 8.1:*
>
> > *"Unconditionally and irrevocably release and discharge ANZ for all actions, suits, claims, demands and causes of action whatsoever at law, in equity and under statute which they may have or which but for this document would, could or might at any future time have or have had against ANZ in respect of or arising out of either directly or indirectly any matter referred to in or arising out of the facilities, the FOS complaint and this document"."*

Recently, the Supreme Court has ruled that banks' use of suspension clauses are unlawful where there is evidence of unconscionable, deceptive or misleading conduct by the bank. Each of these improprieties relate to how ANZ treated Cottage and its directors. Had ANZ honoured the agreement (or contract) in

regards to the release of the three million share proceeds, Cottage would have refinanced out of ANZ and successfully completed the multi apartment development.

The permission granted to ANZ to use security of shares owned by Cottage was on provision that Cottage would retain the sale proceeds of three million of its mining shares in order to pay its creditors. In effect this was a contract which ANZ has blatantly breached and which has led to the devastating demise of Cottage and its directors.

The ANZ process has resulted in the forced sale of the directors' home. It also saw the fire sale by ANZ of the multi apartment development site for the pittance price of just $900,000. This price contrasts markedly with numerous previous sworn valuations of the site at around $3.6 million. It's important to note that one of these previous valuations of $3.6 million was used by *ANZ itself* in support of the approved loan of $10,381,000.

It's equally important to note that at the time of ANZ accepting the sale of the development site for just over $900,000 at the end 2012, all of the then contracted four pre-sales where still active, along with approvals, licences and sunset clauses. The pre-sales totalled some $5,900,000 with 10 per cent deposits in trust. The remaining units to be sold had a collective value of approximately $4 million. The profit margin on the development was above 30 per cent. Even if the value of the unsold units were excluded, ANZ ignored the already contracted sales of $5.9m and sold the development for an astonishing *75% discount*. There was no logical reason for ANZ's destructive acts.

Summary of events

May 2012 to April 2013

The previous overview relating to the period February 2011 to April 2012 concludes with reference to forced asset sales by ANZ. This included the sale of Cottage Holdings' council approved multi apartment development site at 20 Norfolk Street Fremantle, at a sale price some 75% less than several previous sworn valuations. Further, the oppressive demands imposed on Cottage directors to quickly sell their own private home, plus a small adjacent vacant, lot resulted in a 'fire sale' price of some 40% less than recent sworn valuations.

In the previous overview it is mentioned that ANZ issued an asset realisation (ARA) document to Cottage during July 2011 which the bank insisted be signed.

On 29th July 2011 Cottage wrote to ANZ outlining the events between October and November 2010 with respect to the negligent quantity surveyor, In that communication Cottage stated:

> *"The subsequent result of the quantity surveyor's negligence has been one of turmoil between all parties associated with the intended project. Can you please advise if ANZ Bank will join Cottage Holdings in the event of a damages claim against the quantity surveyor".*

responded the same day:

"Dear Peter. I will refer this matter to our Legal Department for consideration. I will respond as soon as possible".

On 30th July 2011 advised by email:

"I refer to your request yesterday seeking a copy of ANZ's appointment instructions to (our nominated quantity surveyor). ANZ is not obliged to release such information to you, and we therefore advise we are unable to comply with your request. ANZ considers that it has allowed you more than a reasonable period of time to consider and return the executed asset realisation agreement (ARA). I reserve all of ANZ's rights to immediately appoint lawyers to proceed to enforce ANZ's securities should the executed ARA and authority to complete not be returned to our office by 2.00pm today".

The email made no mention of Cottage's request for an investigation into incorrect advice to Condil concerning its builder registration.

Reluctantly we signed and returned the ARA document where we clearly noted we did so "under duress". In terms of obligations this document was an enforcement order to sell all of the property of Cottage and its directors.

In essence the directors were forced to agree to ANZ's demands.

ANZ included an extra clause in the ARA document (number 8.1). This was a suspension clause prohibiting us from suing the bank at any future time for any reason. The clause also outlined that we have no redress in seeking any support from the Financial Ombudsman Service (FOS).

We are both of pension age and ANZ has taken everything that we have worked for over the previous 40 years.

Prior to signing away our right to seek redress for damages against the bank, we were seriously aggrieved that the bank had engaged in deceptive, misleading and unconscionable conduct. We have retained all of the evidentiary documents supporting this claim.

Notwithstanding the above Cottage submitted a complaint to the FOS in regards to the deceptive conduct of an officer of the bank. Particular reference was made to the non-release of proceeds from the sale of the three million shares.

On 22nd September 2011 the FOS dismissed our application citing the aforementioned clause prohibiting us from seeking the service's assistance.

The Suspension clause reads as follows:

"Release of ANZ, 8.1 (release)

"The Customer and Guarantor unconditionally and irrevocably release and discharge ANZ from all actions, suits, claims, demands and causes of action whatsoever at law, in equity and under statute which they may have or which but for this document would, could or might at any future time have

or have had against ANZ in respect of or arising out of either directly or indirectly any matter referred to in or arising out of the facilities, the FOS complaint and this document.
8.2 Clause 8.1 may be raised or pleaded as a complete defence to the continuance of commencement of any proceedings in respect of the subject matter of this document, which have been or may be brought at any time by way of the parties to this document against ANZ in respect of or arising out of either directly or indirectly any matter referred to in or arising out of this document"."

We understand that in light of the deceptive conduct by the bank in regards to the non-release of share sale proceeds, the imposed suspension clause imposed by ANZ is unlawful as a result of a decision by the Supreme Court. The court ruled that the banks' use of so-called suspension clauses (a clause in a loan contract suspending a customer's right to sue the bank) is unlawful when there is evidence of unconscionable, deceptive or misleading conduct by the bank.

A recent complaint to FOS (April 2015) has also been dismissed but this time without reference to the suspension clause at 8.1. In this instance the FOS stated the following:

"The dispute is more appropriately dealt with by a court, and despite being an alternative to the courts, FOS cannot deal with every dispute that consumers lodge with us. This is because we are bound by our own Terms of Reference, which sets out the types of disputes that we can consider. Our jurisdictional assessment was not a punitive decision on our part, nor was it made lightly. We remain of the view that it was appropriate that a Court or tribunal was a more appropriate place to consider the dispute. I recognise that you may be disappointed with our assessment, but hope that we have been able to sufficiently explain the limitations imposed by our Terms of Reference".

Prior to resubmitting our complaint to the FOS we forwarded our complaint to the Australian Securities and Investments Commission (ASIC). After five months of discussion ASIC advised that it only acts on a party's claim of impropriety when it is part of a larger contingent of complaints. ASIC further strongly advised that we should contact the FOS.

It would seem that both ASIC and the FOS are ineffective in handling bad bank behaviour to the point that they provide no tangible service whatsoever to any customer with anything more that the smallest or simplest of grievances.

Given the bad experience of the recent misconduct and deceptive behaviour in regards to the non-release of the sale proceeds of shares to pay creditors, Cottage formed the view that conforming to anything that ANZ wanted would be met with resistance and mistrust.

In preference to accommodating ANZ in assisting the sales of the properties owned by Cottage and its directors, Cottage chose to pursue refinance support from various other banks and lending institutions. In each case the end result was rejection of the refinance applications as a result of bad credit lodgements against Cottage and its directors. This hopeless situation was as a result of Cottage not being able to pay its outstanding pressing creditors, itself due to the deceptive behaviour of ANZ in not honouring the agreement to release funds from three million shares owned by Cottage.

From July 2011 onwards the healthy outlook for the multi apartment development continued. The development consisted of six large residential apartments and one small commercial outlet. All of the four apartments that were previously pre-sold by Cottage for $5.9 million remained active, with long sunset clause dates in place. The remaining three titles were collectively worth $4 million. In every respect the status of the apartment development was in excellent shape, with a better than 30 per cent profit margin fully supported by the existing sales and heightened market activity of the day. The accountants for Cottage had prepared profit schedules which supported this healthy profit margin, upon completion of the development.

It is very difficult to comprehend the actions of ANZ which, as a result of the slash and burn mentality, saw a residual debt to Cottage of some $5 million. This terrible situation is a result of not continuing with the development and then being forced to sell property at truly fire sale prices.

The residual debt has left the directors of Cottage in a desperate condition. Not only have the actions of ANZ resulted in this residual debt, but the directors have been faced with the inability to borrow money from any source due to the remaining bad credit ratings that are directly and solely attributable to the deceptive conduct of ANZ. Further, the family of the directors of Cottage has suffered terribly as a result of being homeless with no possible financial support avenues available to us to remedy the situation.

Whilst commenting on our feelings in regards to ANZ is a diversion from the core issues of this summary, we view ANZ as having acted entirely dishonestly.

Between 2007 and mid-2011, numerous sworn valuations were undertaken by prominent valuation companies. These valuations were completed on the multi-apartment development site at Fremantle, our homes at and an adjacent vacant lot. Throughout the development of the Fremantle site, numerous sworn valuations were provided between $3.4 million and $3.7 million, *as is*, even *prior* to construction actually commencing. The instructions for these valuations came predominately from ANZ in line with lending and loan approval conditions.

On 25th June 2012 Cottage received an expression of interest from an overseas purchaser wishing to purchase the development site at $3.6 million, with an anticipated availability of funds within six weeks. ANZ ( ) was notified by email of this interest on 3rd July.

During July 2012 ANZ ( ) employed the valuation company to value the apartment development site in Norfolk Street, Fremantle. Cottage had no knowledge of the result of that valuation until becoming aware that the cost for the work was deducted from Cottage's account that was in the hands of

Upon learning of the valuation charge Mr Randles immediately contacted the valuer and learnt that their valuation was for a $1.4 million. When questioned advised that he had not received the full information regarding the additional merits of the development site, and particularly the active pre-sales that were in place and still under contract. Collectively, these pre-sales amounted to $5.9 million, significantly in excess of the valuation of $1.4 million. Mr Randles then advised that all pertinent information regarding the site would be forwarded to him at and asked that he inform

ANZ of the situation. Furthermore, Mr Randles advised ANZ ( ) of these developments. There was no reply.

On 13th August 2012 Cottage emailed a report to outlining Cottage's concerns with respect to the disparity in the sworn valuations. had previously valued the apartment development site for ANZ as part of the lending conditions imposed by the bank. In that valuation, undertaken in mid-2010, CBRE swore a valuation of $3.6 million. This valuation took into account the following:

i. Council approval in place
ii. Construction costs
iii. The four pre-sales in place
iv. The site 'as is'.

In the latter sworn valuation of $1.4 million, *nothing* relating to the above four points had changed.

On 27th August 2012 ANZ solicitors, , rejected claims by Cottage that discussions had taken place with . The same day, Cottage responded to reinstating the discussion that had taken place regarding the valuation.

On 30th August 2012 once again denied that the conversations between Cottage and had taken place. The same day is notified by email of the pending buyer's interest to purchase the development site for $3.6 million. Cottage also receives emails from requesting further information regarding the international buyer interested in the development site at this price.

On 1st September 2012 the receiver was contacted regarding the buyer's interest at $3.6 million.

In early October 2012 Cottage received communication that overseas buyer's funds had been delayed. Cottage became aware that estate agents acting for the sale of the development site were promoting the sale of the property at $1.25 million.

On 12th December 2012 the lawyer acting for Cottage forwarded a letter to ANZ's solicitors, seeking an explanation as to the valuation shortfall between several valuations on the development site at $3.6 million and the current valuation at $1.4 million. To this date, no response has ever been received to this legal correspondence.

During mid-December 2012, Cottage discovered that ANZ had arranged another valuation through its receivers and that that valuation was completed on 16th October 2012. This Valuation was carried out by another valuation company, , who valued the site at $1 million.

On 2nd January 2013 ANZ responded to a further reminder from Mr Randles with respect to proceeds for the sale of three million Bullseye Mining shares:

"With respect to the unsecured creditors, please provide the following in your email:

i. Copy of the provision regarding the retention of three million shares to pay creditors
ii. Copies of emails confirming the proceeds from the share sales would be directed to unsecured creditors"."

Mr and Mrs Randles can only view this response from ANZ as evasive and deceptive. This view is formed in light of the evidentiary documents, in the possession of Mr & Mrs Randles, which are pertinent to the share agreements, and undertaking and intent of ANZ in regards to the sale proceeds of the three million shares in question. All communications from ANZ was through

On 19th February 2013 the receiver for ANZ notified Cottage that the bank had accepted a cash offer for the development of just $910,000.

The following table summarises the valuations of the apartment development site at 20 Norfolk St, Fremantle.

Date	**Valuer**	**Value**
2008 July		$3,400,000
2009 December		$3,600,000
2010 February		$2,900,000
2010 March		$3,600,000
2011 June		$3,600,000
2012 June		$1,400,000
2012 October		$1,000,000
2013 February		$910,000

It is important to note that the global financial crisis had little or no effect on the values attributed to the development site. This was supported by both the high number of pre-sales and strong prices. By late 2010/early 2011, the property market, as outlined by the Real Estate Institute of WA, was actually *increasing* in value, as was optimism for the market's future.

It is obvious that ANZ was only interested in jettisoning the development, the ultimate cost of which was far more than the millions foregone.

As if ANZ's behaviour wasn't rotten enough, the bank to this day continues to charge us not only interest but also fees pertaining to the receivers and their own lawyers. In effect, they are using the couple's money to sue them and make them destitute.

Notification of these charges – which now exceeds more than $300,000 – was in each case a summarised note stating 'professional services' or 'legal costs to be debited to your account'. The most recent notification from ANZ is dated 13 March 2015. It included a tax invoice from ANZ's solicitors,
addressed to the bank who in turn deducts the amount from the directors' account.

Following the total sales of all property and shares of Cottage and its directors, ANZ then sort a court order to seize any remaining assets owned by the directors. This order was given to ANZ in August 2014 and lead to visits by a bailiff of the court. The bailiff determined what the directors already knew – there was simply nothing left to take, ANZ having bled the couple dry. The ordeal has proven too much for Mrs Randles who has had to begin a course of medication for trauma.

The demise of Peter and Leonie Randles was a sole result of the deceptive and misleading behaviour perpetuated by ANZ Bank and its employees. The devastation caused to the couple and their family leaves them in no doubt that ANZ Bank is akin to a group of professional thieves.

Peter and Leonie Randles
Directors, Cottage Holdings Pty Ltd
June 2015