

28 April, 2012

Senate Standing Committees on Economics
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

RE: Submission in relation to the following: An examination of recent developments in the banking sector arising out of the impact of the global financial crisis and subsequent events.

Dear Sir / Madam,

I wish to make a submission within the terms of reference above; regarding an incomplete and misleading valuation of a property, commissioned by the Commonwealth Bank of Australia, which was subsequently purchased under mortgage to the CBA. I am now trying to sell the property, and it is worth nothing like its valuation. This has caused me to be unable to discharge the mortgage, for which the CBA is now rejecting any form of responsibility.

An account specific events creating this circumstance are as follows.

“ (...) opened in October 2009 offering a fine dining venue to the local and corporate clientele of Newcastle. Our philosophy was to use premium quality Australian and Hunter Valley produce, prepared with creativity and attention to detail, at reasonable prices.

We showcased a range of Hunter Valley wines, and employed an average of 11 local people – including 2 apprentice Chefs, and trained a number of front of house staff as baristas and table waiters / waitresses with formal table service.

Our long term aim was to build the restaurant to that where people could be assured that they could dine at (...) in a warm, relaxed atmosphere, enjoy the finest food and drink available, be treated with old fashioned service – and be somewhere where overseas or interstate friends could dine with a quiet pride.

On 24 August, we made the decision to close the restaurant, put the premises and business on the market, terminate the 13 full and part time staff and close all our food and service accounts.

The specifics of this decision are as follows:

1. The restaurant is situated on the ground floor with expansive glass frontage to the pavement and (...). Pedestrian traffic is generally light, but builds on Thursdays, and is very busy Fridays and Saturdays particularly at night and early morning. On the busier days and nights, the pedestrian traffic consists mainly of slightly inebriated to totally paralytic young people (male and female), usually in groups up to 10 or so. As they make their way past the restaurant they shout, often swearing or abusing - in a fun way of course – for them!), spit, lick or bash against the glass frontage of the restaurant (to give diners a start), make abusive gestures and intimidating faces aimed at diners, vomit, urinate (mainly at the side of the premises or across the street – but

quite visible), smash beer bottles on the kerb, vandalise the electric sign above the pavement (jump and bash was the favourite as they swaggered by), stole an A frame sign, and when I replaced it with one chained to a tree, smashed it.

2. Highlight incidents outside the restaurant include; (i) a full on fist fight as two young men ran across the street to our side and attacked 2 – 3 guys outside the restaurant. Some blood was spilt and all scattered when a marked Police car drove by. It didn't stop. (...)

And finally

(I could go on – but you should have gotten the point by now), (iv) some of the most unattractive exhibitionism I have ever seen (...)

3. A rectangular plaque style notice with the name of the restaurant bolted into the brickwork beside the large front door was forcibly and unlawfully removed.

This standard of law and order prevailed from the time we first opened. It is totally unacceptable for any business and for that matter or even for the pedestrians (of all ages) using the (...) pavement. Adding insult to injury I actually pay rates and taxes for this pitiful excuse for law and order. I have never in the whole time we have been in operation, seen a Police foot patrol pass the restaurant.

The appalling lack of law and order has materially damaged my business by virtue of my patrons' being unable to reasonably enjoy the amenity and public infrastructure upon which this theatre of the disgraceful is played out week after week. In addition to the disgusting disruptions to their dining experience, older patrons in particular who made up a significant proportion of our patrons - were forced to finish their evening by running the gauntlet of intimidating gangs in the street to get back to their cars. If I had the choice I would withhold that part of my taxes that go to fund the Police (who are essentially taking public funds under false pretences), and hire my own security."

Use of a SWOT (Strengths, Weaknesses, Opportunities and Threats) analysis is an acceptable practice in the assessment of risk. The CBA's valuation included a SWOT analysis. This analysis made no reference to any social / law and order issues that would materially impact the capacity of the property to operate as a restaurant. As a result, the SWOT analysis and conclusions of the Knight Frank valuation as commissioned by CBA, is incomplete, in error and to that extent misleading in its conclusions.

While a SWOT analysis is based upon information at a specific time, it is designed to take in the broadest array of risk sources. Further, the fact that it includes 'opportunities' and 'threats' indicates by definition, that it has a perspective beyond the present. Further it is not an analysis that is restricted to any particular form of input data, but should embrace all forms of pertinent inputs. I am not advocating the view that a SWOT analysis provides a gold plated guarantee of the outcomes of risk. However its sole purpose is to identify, describe and assess the full array of risk pertaining to the transactions between the mortgagee and mortgagor. Once communicated to both parties, they

enter into the transaction being fully informed of the shared risk. In this respect, the CBA's SWOT analysis failed in fulfilling its purpose.

Consequently, the valuation over estimated the value of the property and provided a misleading basis for decision making regarding (a) the merits of purchasing at all, and (b) at the specific price that could be regarded as reasonable (c) that the CBA accepted as a basis for approval of the mortgage. This in my view constitutes a failure by the CBA in its fiduciary duty.

Further the Knight Frank valuation states that the likely period required to sell the property would be 12 months. It has currently been on the market since October 2011, and the CBA demanded that it sold by March 31 2012, a period of only 5 months. Though this is not a guaranteed period, it is included in the valuation report because it sets out reasonable expectations. These should be considered in any proposed sale.

In response to phone calls from the CBA on an almost weekly basis urging me to simply pay by selling virtually everything I own, I have had to argue that I need a roof over my head and a car to remain employed and to continue to service my obligations to the CBA. The CBA's urgings would remove my capacity to repay what I am currently able to repay – and guarantee that I would be forced into bankruptcy. I would rather focus on the sale of the restaurant property, and work my way through this situation, even though it might take some time.

I have tried to raise these matters with the CBA, through their Risk Management Institutional and Business Banking, Credit Risk Solutions Manager (name with held - Level 7, 101 George St, Parramatta, NSW 2150) however the bank has paid no heed to my situation and is in apparent denial of its causation of these circumstances through its Knight Frank valuation.

Current situation

Nothing has changed with respect to the law and order issue. A couple of buildings in the immediate area have been renovated or newly built. One has a stone facade set about 600mm above the pavement level and the other is set back from the pavement and about 1200mm above the pavement. Neither therefore have the same kind of exposure as (...) . The pedestrian traffic is the same as it was when we purchased. Currently the valuation has been thrown to the wind. CBA has exerted continuous pressure to sell all our properties at any price – with no indication as to the consequences when the reasonably likely situation arises that there is nothing but the unsellable restaurant property left. Then where do we go?

Currently it is on the market for \$450,000 – no valuation has been involved - and I am being asked to reduce the price further because it is taking too long. As I am being forced to lower the price further to find its market value, this in itself is destroying the properties asset value. Other owners of property in the same building have expressed their concern on this impact on their assets.

This was never the plan. The CBA deadline was 31 March, completely disregarding the 12 months sale period referred to in the valuation. The property has already cost me over \$185,000 loss on the property value alone, with additional operating losses trying to utilise it – giving it a fair go - as a restaurant. The conflict being that we were getting very positive feedback about the food and service we offered, but could not build the volume of business required to become commercially viable. We have tried a number of strategies to reduce our costs, but these have had no impact upon

turnover. The bank is prepared to sell at any price, with the funds required for repayment having to be found from other sources. Newcastle is a small market and possible buyers are waiting for the price to go even lower – anticipating how the bank might behave.

And when I have exhausted all other funds, what happens. We are in exactly the same position as now – with a property that cannot be sold. The CBA is simply taking the easiest, short term route to resolving this matter with no regard to the consequences for us, and no regard to its responsibilities arising from the valuation the CBA's decision to lend well beyond what the property is worth. I assumed the valuation had some validity.

I want to recover reasonable value from the property and repay my debt. What do I want from the CBA?

Option 1

I want the CBA to stand by its valuation. I will sell the property for the best price I can in the current market and deliver the full proceeds of this sale to the CBA (less necessary sale and statutory costs), in full discharge of the mortgage for that specific property.

Option 2

This option – and it is referred to in the Knight Frank valuation (P13) - is to convert it into office space which I will lease. This utilisation is permitted by zoning, and is vastly less vulnerable to the kind of street level harassment the location is fated to suffer. This will require refurbishment funds which I would need from the CBA. I also want to re schedule repayments so that we can reasonably repay based upon leased earnings from the property as commercial office space.

Clearly the CBA shares responsibility for this situation through its valuation and funding the property purchase on that basis. I have then faced the consequent issues with its use – and am expected to bear the full brunt of financial responsibility. This means the CBA walks away from the consequences of a seriously incomplete, erroneous CBA commissioned valuation.

I have sold my home in (...) to reduce my overall debt to the CBA. I suffered a loss in this process of around \$50,000 (discounted relative to current local values) to effect a quick sale. I have made my sacrifice to help remedy this potentially ruinous (for myself) situation. The CBA must also take some of the responsibility and assist in pursuing a solution that is not so one sided and destructive in its consequences and that will actually result in the end, in a resolution of the root cause. The sooner we do this the better – as though the restaurant is closed, it still incurs fixed costs and has no revenue to pay for them.

The current approach of the CBA does not present a solution to the root cause. By ignoring the root cause, the situation is guaranteed to get worse with time. I cannot catch up on repayments while I am losing money each month on an asset in (...) that can neither support an operating business nor be sold to recover my money – from where the funds to settle your loans will come.

This situation threatens to destroy me financially – as I approach my retirement – and was caused by one circumstance alone – the CBA's valuation of a single property and its subsequent decision to lend against it and my acceptance of your due diligence. I have never before in my 63 years been in

any form of financial default. I have been a prudent and valued customer of the CBA for many years. The CBA lending decision in this case was based on a deeply flawed valuation. The CBA now expects to plunder my life-long assets because it's the simplest and easiest thing for them to do – ignoring its complicit role in creating this situation and ignoring my interests entirely. This is not reasonable for the following reasons.

The Valuation

The CBA approved the funding (mortgage) for purchase of a restaurant property at (...) Newcastle, (...) , zoned B3 Commercial) on the basis of an incomplete and misleading valuation. The decision to proceed with a purchase was made largely on this basis, adopting a conservative valuation of \$635,000. This purchase was made via a court appointed Receiver and was well below the expectation indicated to me by the Receiver. I had done my own due diligence checking the table use over a number of evenings, and conducting multiple inspections of the property. While the lower (...) was somewhat run down (as were various parts of Newcastle CBD), there was no indication of the law and order problems as they tended to be most pronounced later in the trading evening.

When we placed the property on the market, we discovered we couldn't get a bidder at \$450,000. I assume I will need to set a lower price still – but there is no guarantee that this will result in a sale.

In financial terms, our decision to purchase in late 2009 was made on the basis of the following considerations addressed by the Knight Frank valuation report (valuation commissioned by CBA through Knight Frank 3 August, 2009, (...)).

(i) The assessment for Newcastle and the Hunter region was reasonably positive, notwithstanding the credit squeeze.

(ii) We had adopted a conservative property value of \$635,000 from a range of \$614,000 to \$654,000, depending upon the method of calculation.

In our discussions with the CBA it was made clear that if the business did not succeed, we could sell the property to discharge the mortgage. This we now know is simply not possible. The root cause of this situation is that the valuation commissioned by CBA was incomplete and therefore misleading.

(iii) In the SWOT analysis by Knight Frank the only 2 threats identified were listed as;

No permanent car space under the strata plan.

No lease in place.

The absence of permanent car space was understood and taken into account at the time of purchase. The fact that there was no lease in place was important in deciding to purchase. We wanted to utilise the premises as a restaurant – for which it was specifically and eminently fitted out.

The property facade is glass, from pavement level to near ceiling height. It permits a view of the vehicular traffic and the deciduous trees planted along the street. At night it has a pleasing, quasi al

fresco ambience. By far the greatest threat to the use and therefore value of the property – which was not identified in the valuation - was the unending harassment, hostility, vandalism and theft directed at the property by the typical passing pedestrian traffic. This would not be an issue for those properties above the pavement level, but was a serious, ongoing issue at the pavement level. This issue with the property impacted the cost of repair and negative image arising from visible damage. It also meant that restaurant patrons had to tolerate almost nightly harassment, while inside the restaurant and also the gauntlet of these gangs getting back to the parked cars. This characteristic of the property received no reference in the valuation report by Knight Frank, which has not just had a significant material negative impact upon the amenity of the property, but rendered it impossible to operate a restaurant.

To the Senate Committee

I implore the Senate Committee to take on board the issues I have raised, such that the CBA will be required to take reasonable responsibility for its contribution to the current financially disastrous situation.

I am more than happy to provide any further documentation of evidence required by the Senate Committee that might contribute to the illumination of this kind of practice, and resolution of this kind of situation in principle or on behalf of my specific case in particular.

Sincerely,

Alan F. Harrison