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Economics References Committee

P.O. Box 6100

Parliament House

Canberra, ACT 2600

Dear Senators,

Re: Senate Inquiry – Effects of the GFC on the Australian Banking Sector.

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— I wish to add my voice to those commercial clients who had suffered financially at the hands of the Bankwest/CBA association during the Global Financial Crisis. My case is relatively simple and straightforward. In August 2008 Bankwest signed a contract with my company, Kelgon Development, to fund the construction of an office/warehouse after I had found a suitable tenant. I located two such willing and able tenants, one in November 2008 and the other in July 2009. Despite numerous items of information supporting the due diligence on these prospective tenants, Bankwest ignored my submissions by refusing to review their qualifications or even bothering to communicate regarding their eligibility, leaving my company helpless and shut out. Eventually, after the unnecessarily long and costly 33 week review period (more aptly named a non-review period) following the introduction of the first tenant I was advised by Business Development Manager during a casual phone conversation on 3 August 2009 that Bankwest Credit had informed him that the bank would not be honouring the agreement to lend and thereby terminating the contract without explanation. It should be noted that all my personal and business assets were tied up in this project. The Bankwest decision to terminate the construction loan agreement, and then sell off my industrial property for \$965,000 less than their panel valuation, completely depleted the resources I had built up over a lifetime and led to the loss of my personal residence as well. So instead of realising a net annual income of \$1,287,000 before debt service and outgoings from two committed tenants upon occupancy of a bank financed building, I now derive my entire income from an old age pension. A more detailed account follows.

After graduating at the Royal Melbourne Institute of Technology in Civil Engineering, I practiced in my profession for some time before engaging in commercial real estate design and development. With regard to the situation at hand, I had invested a considerable sum of my own funds on the design and partial construction of what was to be a privately held public cold storage warehousing facility on a 1.1ha industrial property I owned in Brooklyn, Victoria.

Having exhausted my own resources, in late July of 2008 I approached Bankwest to fund the completion of the speculative project, not necessarily as a cold store, but as a more universally marketable multi-purpose office/warehouse. Amazingly, a \$3.7m offer to fund the project was issued and signed into contract within 14 days of my first meeting with the bank's Business Development Manager. \$1.25m was allocated to pay off an existing land loan, pay settlement fees, future development costs and maintain a \$115k interest reserve until a tenant or buyer was found and construction could begin. The remaining \$2.45m was to cover soft and hard costs associated with the construction to build the basic structure. The exact cost or extent of any fit-out work would not be known until a prospective tenant or purchaser was identified, and would be addressed at that time. Due to the haste with which the contract documents were prepared, some contained errors and omissions which I indicated I was happy to have amended by way of revisions later on. Settlement and disbursement of the \$1.25m land loan component took place on 1st September 2008.

Notwithstanding the errors contained in the Facility Terms, I was duly impressed with the speed and efficiency with which Bankwest had expedited the contract to lend in. With rental being my preference over a sale, I immediately

commenced soliciting prospective tenants through contacts in the industry, real estate agents and advertising, whilst continuing to refine the basic design and preparing for an impending start of construction, since funding was assured.

As luck would have it, in late November of 2008, the Managing Director of Dockside Coldstore contacted me with interest in a long term lease of Stage 1 of the potentially two-staged project. For flexibility, I had designed the project so that a Stage 1 could be built with or independent of Stage 2, and vice versa, to form two independent units if need be. So in compliance with the bank's General Terms for Business Banking, I immediately sent notification on 27/11/08 and followed up with a 3/12/08 Letter of Interest from Dockside and then a 19/12/08 preliminary construction quote from registered builder, Varcon Constructions, expecting a swift bank review and discussion of the tenant's eligibility.

A timely bank review was essential for a number of evident reasons. Bankwest was obligated to advise if this tenant and its intended cold storage use of the building and associated fit-out cost was acceptable or not. If not, the bank needed to quickly identify any concerns in order to provide me with an opportunity to address those concerns and offer a solution. This was normal banking procedure and necessary to prevent time being wasted on a tenant, which had little or no chance of success. Also, Dockside's lease was expiring in 6 months and it would have been unfair of the bank to leave it in the dark about its future place of business for any length of time.

So I was not pleased to receive an e-mail from the Bankwest Business Development Manager on 30/12/08 indicating receipt of the Dockside tenancy documents, but requesting mostly irrelevant information before he would present the application to Credit. Disturbingly, the additional information asked for would still have been well short of the input needed for a competent Credit presentation, and demonstrated what appeared to me to be a casual attitude toward my application. What should have followed, and normally does, was for this Manager to immediately call a meeting to advise on a check-list of outstanding items which he thought would have been necessary for a viable submission to the Bankwest Credit Department to maximize the chance for success. A face-to-face meeting would most probably have answered more questions and resolved more issues there and then than weeks of correspondence. So even at the outset of the approval process on Dockside Coldstore, it could be said that diversionary tactics were used to defer the tenant review instead of a productive approach to swiftly establish suitability.

In reflecting back on this specific period of time, the casual attitude displayed by the Development Manager towards my rental prospect may have been attributable to a sudden lending policy change following the acquisition of Bankwest by the CBA on 19 December 2008. No doubt the future direction the Bankwest commercial real estate lending policy would take had already been discussed and agreed upon in principle between the two parties. A business banker once told me that if a bank keeps asking for more information rather than choosing to discuss the information it has, it is most likely stalling. But I was determined to do whatever it took to get this project finally funded and built because almost all I had, in both personal and business assets, was now riding on the success of the project. Still believing in Bankwest's integrity at the time I continued in good faith with the construction loan process.

Following that 30/12/08 email from the Development Manager wherein he requested some project information before he would submit the Kelgon project to Credit for construction funding, I heard nothing from Bankwest for a long 16 weeks, until 22/4/09 – an inordinate amount of time constituting an unconscionable delay. Incidentally, a 28/2/09 start of construction mandated in the Facility Terms of the contract came and went without comment, despite this non-compliance constituting a serious Kelgon default. The fact that this default was not raised by the bank at the time of occurrence indicated Bankwest's total detachment and indifference to the realities of their contract to lend. During those 16 weeks, I had submitted 14 separate items in response to the email questions in an attempt to trigger funding approval. Among those was a sworn valuation which the Bankwest Manager had instructed, together with specific instructions for the valuer to use the Dockside tenancy as a basis for the report. Also, a comprehensive Heads of Agreement between Dockside and Kelgon detailing the specifics of the lease.

The 22 April 2012 email mentioned above arrived a tardy and inordinately long 21 weeks after I first introduced Dockside to Bankwest for review and contained comments on the Dockside tenancy proposal. It was sent by an unnamed member of the Bankwest Credit Department to the Development Manager and forwarded to me without

comment of any kind. I was given no opportunity to review the documents the Manager had submitted to elicit the comments, and, judging from the Credit member's request for additional information, the package must have been deficient, containing little more than the basic heads of agreement, the valuation and a Dockside financial statement sent in earlier by their accountant. This was obviously not a proper submission to Credit but an attempt by the Manager to satisfy my ongoing call for action and to keep me quiet. In hindsight, had the Manager secured this Credit response after I first introduced Dockside when he should have, 21 weeks earlier, I would have had the opportunity of looking for alternate funding, especially with the luxury of a tenant in hand, and saved on the cost of having to carry the project over that time. Nevertheless, the Credit person did address Dockside and the construction loan, starting with: "There are a couple of issues before we can progress" and ending with "Happy to discuss further as required." Since this email was the only acknowledgement from Bankwest since settlement that Kelgon even existed, I took its recommendations as guidelines on how to achieve funding approval at face value and spent the next few weeks supplying, or resupplying, the information he requested.

Since this Credit email was addressed to the Development Manager, it would have been incumbent on him to not just forward the document straight to me, but to arrange a meeting to discuss ways of satisfying its content. He did neither, so in the interest of expediency, I took it upon myself to respond. The first of the two main issues the Credit person saw as an obstacle to construction loan approval was that the Loan to Development Ratio (LDR) was 81% rather than the normal 75% or less. This issue could easily have been solved with the infusion of an additional \$450k equity contribution derived from my Toorak apartment to supplement Kelgon's existing \$1.2m capital contribution. The second was to gain additional comfort in Dockside's ability to pay rent. This was resolved on 27 May 2007 when Dockside produced a letter of intent from Fernhurst Cold Store and Refrigerated Transport, a major industry player, agreeing to sub-lease 1000 pallet spaces from Dockside. The effect of this would have been to enhance Dockside's revenue by approximately \$450k per annum, more than enough to allay any bank concerns regarding the income to service the rent. This information was immediately passed along to Bankwest with the expectation that the Credit member would be true to his representations and be "happy to discuss as required." Unfortunately I received no response despite Credit's assurance that it would proceed with my loan application once it received this information.

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During a subsequent conversation with Graeme O'Brien, Managing Director of Fernhurst Coldstore, Mr. O'Brien expressed interest in a possible long term lease of the Stage 2 of the project, since the size and location suited his immediate needs for expansion. After successful negotiations he issued a Letter of Intent on 14 July 2009 for the rental of the entire Stage 2 for a ten year term, with options, for \$648,120 net pa. (I pointed out earlier that Stage 1 could be built with or independent of Stage 2, and vice versa, to form two independent units). This inclusion of Fernhurst as a major participant in the project now provided Kelgon with more than sufficient rental income to service a construction loan, with the only question being whether it would be to build Stage 1, Stage 2 or both. As before, I informed Bankwest of this fortunate situation and again asked for a quick evaluation of my funding requirements because Fernhurst had an urgent requirement to occupy by the end of January 2010 and needed an assurance that funding would be in place so that the construction schedule would accommodate this deadline. Again time went by without a Bankwest response. It was now almost a full year since the contract to lend was signed and I faced the imminent depletion of my development funds required to continue business operations and service the interest reserve with which Kelgon paid the Bankwest interest on the land loan. With deep concern I kept phoning the Business Development Manager and sent urgent letters seeking immediate action to review both Dockside and Fernhurst, in compliance with its own General Terms, so that the long awaited (33 weeks since 27/11/08) approvals could be granted and the construction funding initiated.

The response I finally received was not what I had expected. During a phone conversation with the Manager on the 3rd of August in which I inquired how the new Fernhurst tenancy was received by Credit, the Manager informed that the bank no longer wanted to continue with my application and was terminating the agreement to lend. I was devastated. I could not believe that the bank would, without comment or discussion, unilaterally terminate a signed contract. The only logical answer was that they did not want to make the loan, regardless of the merits of my application. A formal review of Fernhurst would have confirmed Kelgon's compliance with the rental requirement in the loan agreement, and make it very difficult for Bankwest to find a reason to reject Fernhurst as a tenant. It was much more expedient for Bankwest to terminate the loan than have to provide a cause for rejection which later could be challenged in court.

The letter of complaint I wrote soon after also went unanswered. However, a few days later on 7/8/09, I received a cleverly worded Letter of Variation which began with "We are pleased to advise that we have agreed to provide additional Facilities to you." At first sight, it appeared that these facilities offered were in addition to the original land and construction loan offer of 14 August 2008. But a closer look revealed that, whilst the bank had increased the current land loan by \$20,000, it had completely excluded the vital construction loan which was the very purpose of my original loan application. In other words Bankwest was saying that they will provide me with an additional \$20,000 so that I could afford to pay their interest until maturity, and therefore avoid default on the land loan, if I relinquished my claim on the \$2,450,000 construction loan despite having tenants in hand who were ready to occupy in 6 months, potentially paying a handsome net annual rental of \$1,287,000 for a 10 year initial term. Faced with the reality that the bank would not honour its construction loan agreement under any circumstance, and the depletion of my funds over the 9 months of bank inaction, I reluctantly signed and returned the variation on 25 August 2009 – exactly one year and one day after the original Bankwest offer to lend was made and accepted.

Sill in disbelief that an established bank could and would violate a valid contract in such a blatant manner, I scurried unsuccessfully to find an alternative source of funding. By now the effects of the GFC had permeated throughout the lending institutions and none were willing to invest in such real estate deals. Besides, Bankwest had left me with insufficient funds to finance an establishment fee, let alone the valuation and other costs required to lodge a new application. Also working against me was that I owed money to architects, engineers and others who had assisted with the project development while the Bankwest loan application was pending. But most importantly I lost my prime tenant, Fernhurst Cold Storage, who understandably declined to proceed after I informed them that my bank had withdrawn their construction loan facility and I could not meet their January 2010 occupancy deadline.

Desperately short of funds and still holding out some hope that I may be able to salvage my project since Dockside Coldstore was still available as a tenant, in November of 2009 I was forced to borrow \$100,000 on a second mortgage basis from a lender of last resort at an interest rate of 25% pa. With this money I was able to pay down \$20,000 of the \$1,270,000 I owed Bankwest and gain an agreement to extend the land loan to 1 February 2010 to allow me time to refinance or find a buyer for the property. Unfortunately, given the financial conditions I could find neither by the new maturity date, so Bankwest began applying the default rate of around 19% to the balance of the land loan. On 19 July 2010 Bankwest appointed receivers and on 14 December 2010, the property was sold for \$1,575,000, \$965,000 less than the \$2,540,000 valuation carried out by Bankwest's own panel valuers on 6 August 2009.

For a detailed account of my dealings with Bankwest over that one year period, I have enclosed a folder which contains a 41 page brief I had prepared on behalf of Kelgon Development, supported by 87 exhibits attesting to the volumes of information with which I supplied Bankwest during the so called approval process. These included answers to questions asked in the 30/12/08 email from the Development Manager and also the 22/4/09 nameless Credit person who reviewed the Dockside tenancy. Neither bothered to respond at the time to important project related questions they themselves had asked for. Despite repeated requests from Kelgon, and contrary to commercial lending practice, not one face to face meeting was granted by the bank during the approval process, not even to inform me that the bank had terminated the contract to lend. This conduct was in violation of the cooperation requirement implied in every contract and amounted to unconscionable behaviour in allowing this neglect to continue for so long. The Bankwest Credit member's invitation for Kelgon to submit enhancements to the Dockside lease before construction funding would be considered, and then ignoring those when submitted, constituted willful misrepresentation on his part. In fact, the disregard and misrepresentations demonstrated throughout would constitute a Bankwest repudiation of its contract with Kelgon and consequently render it answerable for its actions in a court of law.

Yours faithfully,

George Kelepecz, Director