

4 June 2012

Economics References Committee  
PO Box 6100  
Parliament House  
Canberra, ACT, 2600

Dear Senators,

**RE: Submission to Senate Inquiry: Effects of the GFC on the Australian Banking Sector**

I write to provide submissions that relate to how I and my business were treated by the Bank of Western Australia Limited (**Bankwest**) after it was acquired by the Commonwealth Bank of Australia (**CBA**) during the Global Financial Crisis (**GFC**) in late 2008.

### **Introduction**

I hold both a Bachelor of Engineering degree and a Bachelor of Building Sciences degree and am a licensed builder. I have been the project manager for a number of developments within the Australian Capital Territory ('ACT') and have been involved in property development, both commercial and residential, for about 27 years. Up until about 2001 I worked as a project manager with Bovis Lend Lease and I now operate my own business [redacted].

At all material times I was the sole director of [redacted] and [redacted].

### **Facility with the Bank of Western Australia**

In July 2008 I through [redacted], purchased land at block 9 section 50 Macquarie in the Australian Capital Territory (**the Land**) for the purpose of redeveloping it. The purchase was financed with a loan from Bankwest. The purchase price was \$8,000,000.00 plus GST of \$800,000.00. I paid the deposit of \$800,000.00 and Bankwest funded the balance of the purchase price. Interest for the first 12 months was to be capitalised as it accrued. When the GST for the purchase was refunded it was paid into the facility account which left the balance at approximately \$7,300,000.00. The amount of the facility was for \$8,000,000.00 which meant

that the total interest that could be capitalised was \$700,000.00. I had allowed for 12 months of capitalisation of interest when doing my feasibility studies.

The intention with Bankwest was to have them fund the development of the Land.

The bank's security included a first registered mortgage over the Land, a personal guarantee given by me as well as 2 others, and a fixed and floating charge over the assets of my companies.

After settlement of the purchase of the Land a dispute arose with the vendor in relation to the correct amount of the purchase price resulting in the vendor bringing proceedings against the Redevelopments in the ACT Supreme Court. The proceedings were resolved in my favour on 25 June 2010 by judgement of the Court of Appeal in \_\_\_\_\_

The vendor obtained an injunction at the commencement of the proceedings (in about August 2008) restraining me from increasing my borrowings on the security of the Land. As a result I was unable to raise finance to progress the development of the Land. The injunction was lifted when the Court of Appeal ruled in my favour.

I had to obtain an extension of the facility expiry date several times during the course of the court proceedings. Each time I made arrangements to do this through \_\_\_\_\_ of the Canberra office of Bankwest. Most of the time I spoke to him by telephone but I also wrote to him. He was always very supportive and I never had any problems in arranging an extension. I had always met my interest repayments and there were never any issues with my facility.

During the whole time the proceedings were on foot I met the holding costs of the Land from my own reserves. This meant that I could not take any steps to advance the development application process as I needed to make sure I had fund to meet my holding costs. Throughout this whole process \_\_\_\_\_ asked me to keep him informed about the developments in the litigation. I spoke with him frequently by telephone to update him on what was happening. I let him know immediately when the proceedings were resolved in my favour and he was always kept abreast of the status of my arrangements to develop the Land.

In January 2010 the bank surprisingly requested an updated valuation in relation to the Land even though the I still had a current valuation from Herron Todd White that was only 6 months old. The bank commissioned Knight Frank Australia Pty Ltd to carry out this valuation. The valuation dated 1 February 2010 put the Land at a decreased value which put me in breach of the allowable lend to value ration (LVR) under the facility. This valuation had significant flaws such as inflated sales commission rates. That inflation alone took \$4 million dollars off the value. I went to great lengths to analyse the valuation, to point out to Knight Frank where they used inaccurate data and I set this all out for the bank as well. Both Knight Frank and the bank refused to adjust the data and insisted on leaving the facility in breach of the LVR. They then charged me interest at the default interest rate.

It was at this time that \_\_\_\_\_ had told me that the bank no longer wished to fund my construction. On that basis he said that they would stay with me until I could get a refinance with another bank and they knew that would not happen until I had a development approval. I therefore kept \_\_\_\_\_ up to date with my progress with the court proceedings, with preparing a development application and progressing towards development approval.

As soon as the result of the proceedings was known and the injunction was lifted I was able to progress with preparing and lodging a development application. I continued to keep the bank updated and they were always happy. Often my discussions with \_\_\_\_\_ would end with him saying "*Mate, it's good to see things progressing. Keep me informed.*"

On 18 October 2010 I received the first of many disturbing letters from the bank alleging that my facility had expired. They were still charging me default interest because they alleged that I was in breach of the LVR. I will still paying default interest. The bank demanded the facility to be paid out in full which I was not able to do and they knew that I would not be able to do that until I secured development approval. I was not looking to refinance at that time because \_\_\_\_\_ represented to me that the bank were happy to wait until I had development approval. I was focusing heavily on getting my development application lodged.

Each time I received one of the letters from the bank I immediately called and spoke with \_\_\_\_\_ who always told me that things were fine and that as long as I keep paying interest and keep showing progress "*everything will be fine*". I continued to pay the default interest on

the basis that it would all be reconciled in the end as I did not want to do anything to jeopardise my ability to progress. I also confirmed my position with him in writing.

I paid the default interest under protest at about \$120,000.00 each month. I did this for over 2 years. I could not afford for Bankwest to wind me up on the basis of a default which did not exist.

Things were always good with the bank and with \_\_\_\_\_ . It was not until I received a letter on 20 May 2011 I by email from Gadens Lawyers on behalf of the bank serving a demand for repayment of the facility that things turned really bad and have never recovered. After I received that letter I telephoned \_\_\_\_\_ immediately. He said *"I don't know anything about this. I'll find out what's going on. They're probably just protecting their position because pay out is getting close."*

After that conversation I got in touch with my lawyers straight away and have not had contact with \_\_\_\_\_ since then. My lawyers filed proceedings with the ACT Supreme Court seeking an injunction to stop the bank from winding me up so that I could progress to get to the point of refinancing so I could pay out the bank without losing everything. We were successful in that application and obtained an injunction restraining the bank from taking steps to rely on its securities.

Development approval was issued to me on 24 June 2011. A third party appeal was lodged with the ACT Civil and Administrative Tribunal. I was a party to those proceedings and successfully defended the DA approval. I spent another \$150,000.00 on legal and consultant fees through this process.

The bank fought the injunction proceedings hard and were extremely aggressive. It got to the point where I literally ran out of money and was not able to continue to fund the court process. I had become aware of the role of the Financial Ombudsman Service and I have sought assistance from the Ombudsman to investigate the conduct of Bankwest and to prevent them from taking steps to wind me up whilst the investigation is underway.

Since development approval was granted I have obtained an updated valuation for the Land from CB Richard Ellis Australia valuing the land at \$16 million. Throughout the course of the proceedings the bank was owed approximately \$8,500,000.00. Their interest was always secured and well protected. They still did whatever they could though to put strain on me and quite frankly, it is working.

Whilst all of the above has been going on I was continuing to expend money on architects and other consultants to get the development to building approval stage. Those costs, as well as the holding costs that I have paid have come to a total of approximately \$1,600,000.00 to get to development approval stage.

In about November 2010 I commenced marketing and pre-selling the units, which I am still doing. To date a total of 212 out of 322 contracts have exchanged. This is the strongest selling development at the moment in the ACT.

As a result of the financial pressure that has been put on me by the bank I have found myself constantly having cash flow issues and finding myself behind in my ability to pay creditors. I have used every possible resource to hold the bank off and stop them from winding me up. I have incurred approximately \$150,000.00 in legal costs in relation to one creditor in particular, the largest of my creditors, because I have been unable to pay to date.

I have now had 2 statutory demands issued for the payment of a debt that I have been unable to cash flow the payment. The second of these was issued today, 4 June 2012. The amount is for just over \$2.5 million. I could have made that payment some time ago if it had not have been for the way the bank have treated me and the pressure that they have and are continuing to apply.

Finally, I had made arrangements to pay my largest creditor over 12 months ago and had sourced mezzanine finance to allow that payment to be made. I requested consent from the bank to register a second mortgage to enable those funds to be advanced to me and the bank refused. They refused to allow a second mortgage to be registered and gave no reason whatsoever. That has put incredible strain on me financially.

Throughout the course of the above I have made countless offers of settlement to Bankwest seeking to resolve the above situation. They have taken no steps whatsoever to work towards a resolution and they have constantly demanded repayment of the facility in full.

My business is just about to go under completely. I do not have any funds left to fight the bank anymore and I can not raise any equity or finance to pay creditors because the bank have refused to allow a second mortgage to be registered over the Land.

My life has been on hold since 2010 when the bank started charging me default interest. That was the real crippling point for me. That is what has used up all my reserves and has caused me to constantly go backwards to the point where I am now at.

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Yours Faithfully,

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