

## SEETO – v -- BANKWEST SUMMARY (DRAFT 1)

1. 1989 Victor Seeto purchases interest in first hotel, Tea Gardens, Bondi Junction, NSW \$ 5 m
2. 1997 Seeto purchases Newington Inn, Petersham, NSW. Some \$ 320,000 Sold 2001
3. some \$ 2.5 m
4. 1998 Victor Seeto and family associates purchase AB Hotel, Glebe, NSW some \$ 2.2 m
5. 1999 Victor Seeto and family associates purchase Hotel William, East Sydney, NSW. \$ 4.75 m
6. Sold 2005
7. some \$ 9.5 m
8. 2005 – 2007 major renovation of AB Hotel some \$ 6 m
9. 2004 Seeto and family associates purchase Dog & Parrot Hotel, Robina, QLD some \$ 19 m
10. Up to 2007: Seeto and family business partners (Seeto) maintain banking facilities with Commonwealth Bank. The facilities are secured primarily against:
  - (a) Property “The Dog and Parrot Tavern”, and  
 Vacant Land adjacent, Robina, QLD. Combined Valuation \$ 28.4m
  - (b) Property “AB Hotel”, Sydney. Valuation \$ 15.5m
  - (c) Charge over company, AJC Enterprises Pty Ltd, owners of unencumbered  
 Warehouses in Gladesville, Sydney. Purchased 2011 \$ 4m

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Total Assets taken into Receivership \$ 47.9m

  - (d) Company charges of Emerport Pty Ltd and Myefu Pty Ltd. No Assets
  - (e) Personal guarantees from the Seeto interests. Homes etc
11. Late 2007, Seeto account relationship manager at Commonwealth Bank moves to Bankwest . Seeto is approached by same relationship manager now at Bankwest to move business from CBA to Bankwest.
12. Soon after moving loans to Bankwest, BankWest coerce/harassed/intimidated me into Fixed Interest Rates just before Rates collapsed. Instigated meeting at Hotel with BankWest treasury, whom advised that Australia had decoupled from USA and therefore will not be affected with events with USA origins. BankWest also informed me, Fixing Rates were part of the deal and they would feel more comfortable.  
 This tipped the business into cash flow difficulty as loans were locked in at high levels, whilst Variable rates were reduced massively. Later, Bankwest would increase the Bank Margin rate, thereby making the full interest rate paid for the fixed component almost double the variable rate. This created further cashflow issues , thereby breach positions. This was exasperated by the GFC having a negative effect on cash flow.
13. Seetos loan Covenants were changed thereby setting up the loans for breach:
  - (a) Provide monthly management accounts change from 3 monthly
  - (b) Maintain EBIDTA at 2x the interest expense for both loans change from 1.5 times
  - (c) Loan LVR on the both Loans did not exceed 55% no LRV
  - (d) There were other financial performance covenants

14. Bank Interest Margin Increased from approx 1.15% to 2%, then 3%. I informed BankWest, I did NOT Agree, upon my heated objection, was said to my face " You Can Afford It " ( as per Victor Seeto Affidavit )
15. Loan LVR not to exceed 55%, NOT Ever discussed at ANY of the meetings.
16. Approx April/May 2009 Investigate Accounts Appointed Recommend to sell D & P, Qld Investigative account communicates with CBRE HOTEL brokers in QLD
17. Informed BankWest, the D & P and Vacant Land, would be dressed for sale. BankWest agrees valuations not required.
18. Sept/Oct 2009, Heads of Agreement signed with ALH, subject to Woolworths board approval. approx \$ 24.75m
19. 23 November 2009 Breach Notice issued (breach alleged to be failure to meet EBITA target and failure to provide monthly accounts for October)
20. Dec 2009/Jan 2010, ALH does not proceed with purchase, reduces price to \$ 13m after Bankwest leaks impending actions to market place.
21. Jan 2010, ALH confirms continuing interest at \$ 13m
22. Feb 2010 ALH confirms interest at \$ 16m
23. 7 July 2010 Bankwest issues breach notice date 6 July 2010 demanding repayment of the full amount within ( 1 ) one day. (\$21,857,000.00). The alleged breach was an allegation of failure to pay interest on the facilities.
24. 8 July 2010 Bankwest appoints receivers after 24 hr notice of demand, even though Terms for Business Leading stipulates " give you written notice terminating the Facilities (" termination Notice") and specifying a Final Repayment Date not less than 30 days after the date of the Termination notice". Ie minimum 30 days notice, when I got 24 hours notice.
25. 12<sup>th</sup> July 2010, \$ 1.3m BANK CHEQUE was HANDED to BankWest, Head of Credit NSW, together with a sum of up to \$ 400,000 AUS to sit in account as surety for interest payments. BankWest promised to organise a meeting the morning/day with the express purpose to review ALL options available to resolve this issue. Further, additional surety for the debt/loans was available to BankWest, in securing access to the Assets, so the Sales process as previously agreed and always reaffirmed would proceed. Needless to say, tomorrows meeting never came.
26. 13<sup>th</sup> July, This Offer was put in writing to BankWest on their request, but it was simply window dressing.
27. 15<sup>th</sup>-19<sup>th</sup> Aug, Same Offer was emailed to BankWest, Head of Credit Australia. BankWest was trying to Destroy the family by ANY and ALL means in a unreasonable, and unfair manner.
28. 19<sup>th</sup>/8/10 Court Injunction sort but not successful
29. Tender for Dog & Parrot commences
30. I tried unsuccessfully to open dialogue with BankWest on many occasions.
31. Auction campaign of AB Hotel commences.
32. 18<sup>th</sup> Oct. BankWest agrees to meeting by phone, then reneges the next day
33. Family puts in \$ 18m bid for Dog & Parrot Tavern. Receivers informed to ensure family does not regain Hotels. 2<sup>nd</sup> round offers designed for that outcome.
34. ALH lifts bid from some \$ 13m from 1<sup>st</sup> bid to some \$ 18.3m in 2<sup>nd</sup> bid with conditional offer ( Breaking Lease on Bottleshop ). . . .Tender documents TERMS dictates No Conditional offers

35. BankWest signs \$ 18.3m sales contract with ALH, however, purchase price includes stock of some \$ 200,000 to some \$ 400,000. In the commercial world, ALL assets/business prices do not include stock ( Variable Cost-of-Goods that are singularly so definable ).  
The Net-Present-Value of the said asset, D & P with Vacant Land, is sold for significantly less than \$18m bid by family at 1<sup>st</sup> round. Family miss out.
36. Family requests payout figure for loan/debt payout figure ( indicative or otherwise).  
BankWest NEVER provided payout figures, even though receivers inform figures have been provided to BankWest
37. 19<sup>th</sup> Oct. Family request payout figure again, with written letter informing BankWest, the funds originally used purchase Dog & Parrot, to be used residual loans/debts.  
Family request delay in auction of AB Hotel, so accurate payout figure could be ascertained, BankWest refused. Played game with family by informing us to put request in writing, then ignoring the same.
38. Family was FORCED to buy AB Hotel at Auction.
39. Dec/10. BankWest receipts some \$ 26.5m to pay some \$ 23.5m
40. BankWest sanction actions designed to subvert current and future legal proceedings by ;
  - a. Jan 2011. Begins sending monthly bank statements with our surplus funds ( some \$ 840,000 ) in an account with No access. This is Intimidation ( teasing me ). This is Un-ethical.
  - b. Refusing to provide or account for receipts/expenses/disbursements of Sale proceeds. ALL Surplus funds rightly belongs to the family and must be returned in a reasonable time. Unfair and unreasonable.
  - c. Deducting Un-Justified Legal and Receivers cost each and every month, together with account charges, for over 13 months after BankWest recovers ALL their claimed moneys/costs/loans/debts.
41. Blackmailed by BankWest. Conditions Release of our funds with dropping ALL current legal action & undertaking not to hold either BankWest or Receivers accountable in future.  
Otherwise, BankWest will continue to debit monthly, costs to the said surplus funds until they are depleted. Receivers inform me their role was completed many times, and direct to BankWest, ALL questions as to why receivers not discharged from companies
42. Receiver retires from holding company of Gladesville Warehouses. Receiver informs me, BankWest is the Only impediment to their retirement from the companies which had their assets liquidated.....Un-ethical behaviour .
43. BankWest has unethically, and unfairly benefited financially from the families funds, by earning interest ( as a minimum ) and/or profiting through their lending business, and not crediting interest/or that profit, back to the rightful owners of those funds.
44. When Seeto interests applied to the Court to prevent the appointment of a receiver, the Bank responded by saying that they were relying on other alleged breaches that were not referred to in the notice but had been earlier notified.

#### **The alleged failure to pay interest on the facilities**

45. Interest and principal was always paid by the bank debiting the overdraft account by themselves. No payments were ever Refused/Not cleared.

### **The alleged overdraft breach**

46. The overdraft "limit" was claimed by the Bank to have been exceeded but it was over the claimed "limit" even at the time the facility was granted (\$674,363.01). As the bank enjoyed super interest rate of approx. 17%, I was under the impression they were happy to continue doing so.

47. 12 October 2009 a breach notice was issued in relation to exceeding the limit, however, no action was taken.

48. Subsequent to this, the Bank keeps debiting the account with both interest and principal

49. The interest that was being debited to the account was the interest accruing on the main facilities.

50. The above circumstances and actions, set me up for alleged breaches of exceeding the overdraft "limit" at ANY and ALL times, including from day one. BankWest did not work with me, but rather deliberately put me into a subordinate position, ready to breach me at a time of their choosing.

51. At No time, was I made aware of the change in attitude by BankWest from one of ".....worked with Seeto for 12 months to resolve the issues ....." ( as per BankWest written response posted Today-Tonight site On-Line ) , to one of placing some \$ 47.9m of Assets into receivership.

In fact, the actions of BankWest, consistently lead me to believe :

- The Overdraft "limit" was flexible, as there were No payments Refused/Not cleared, and by which the Bank earned super interest of approx 17%
- I was allowed to exceed the Overdraft "limit" pending the sale of our most valuable asset, Dog and Parrot Tavern & Vacant Land adjacent, as this would either extinguish the loans completely or substantially re-adjust the loan/asset and servicing ratios.

I agreed to bring the Overdraft within the "limit" if a sale of the D & P & Vacant was not achieved or pending, however, at no stage did I think a Proper and orderly sale was not achievable, despite BankWest's indiscretions.

### **The alleged failure to lodge Monthly Management Accounts**

52. It is alleged that the Seeto's failed to lodge monthly accounts and this was alleged in the breach various notices as set out above. It is unreasonable that the Bank go back to relatively minor breaches that were over 12 months beforehand. No alleged breaches were issued for some 5 months before the receivership. Prior to this, I had never provided management accounts on time, BankWest Manager, whom was also CBA manger, knew this from loan inception and

never asserted otherwise. The actions of BankWest's manager, lead me to believe this was there simply to ensure accounts were supplied, and not as a means of enforcing/enacting receivership.

53. Further, i was never sure which entities management accounts were to be lodged, this was never made clear to me.

54. Tightening the management reports from quarterly to monthly, set me up for alleged breaches. I did NOT agree to the changes when informed at one of the meetings.

### **The alleged failure to meet Interest Cover Ratio, failure to meet EBITA**

55. Interest Margin Increase from some 1.15% to 2% set me up for the alleged ICR Ratio Breaches in a declining economy. I did NOT agree to this, there was heated discussions.

56. Cohering/Harassing/Intimidating me into high Fixed Rate Interests, set my business up for cashflow issues in a declining economy. Variable Interest rates collapsed within months of Fixing our Interest Rates.

BankWest's increased Interest Rate Margin, together with high Fixed Interest Rate, severally exasperated CashFlow in a declining economy, thereby setting the business up for alleged breaches of "failed to meet interest cover ratio, failed to pay tax in the sum of \$659,016 (as at May 2009) failed to conduct business in orderly manner (failed to pay tax), failure to provide accountants report certifying that all tax paid ". Simply, the Bank took the money in higher margins and rates, which subsequently set me up for the alleged breaches.

57. BankWest actions, placed the business in a subordinate position which the Bank then used as reason for alleged breaches.

58. The management accounts supplied included one-off or non-reoccurring expense add-backs of which BankWest did not agree. These were discounted thereby making the Ratios and EDITDA situation seem worse than it was, giving a reason to alleged breaches. Setting me up for alleged breaches.

59. BankWest informed me, the management accounts were just that, my management accounts for that period, and as such, did not have to reference year end or final accounts. I understood the management accounts to be anything and in any form we were be using.

60. Further, BankWest instructed myself and ( D & P Tavern employee ) to amend management accounts to increase EBITDA after the original accounts were supplied to the Bank. Sometimes, the accounts would be amended 2 or 3 times at BankWest direction.

I queried why it was necessary, given the annual accounts would not then equal the sum of the quarters. BankWest informed me, that would not matter, as it would be 12months away, and then it would be 12 month old, so it wouldn't matter.

Further again, BankWest knew the EBITDA was not being met (allegedly) from the inception of the loans, as I had the same Manager at both Commonwealth Bank and BankWest. The businesses encountered some cashflow issues at Commonwealth Bank, just prior to being refinanced by BankWest. Thereby setting the business up for alleged breaches.

#### **the alleged breach of allowing lease to be cancelled**

61. Informed BankWest the Detached Bottleshop Lease was expiring well before it expired. BankWest agreed that I should Not to pursue new lease, as the shop was un-profitable. Why did BankWest agree with the decision and then use that as reason to breach me ??

#### **the alleged breach allowing caveat to subsist on property**

62. Caveat on Property was unknown to me or the family. Certainly did not intentionally allow the caveat to be placed on property. Further, the caveat related to the administration of Glebe Hotel P/L trading entity, which BankWest had prior knowledge. The administrator had forgot to remove the caveat even though the administration was completed

#### **Seeto position**

63. BankWest under the "Banking Code of Conduct", is bound to treat us fairly and reasonably, in a consistent and ethical manner, this in the context of the customer conduct, the banks conduct and the contract between bank and customer. BankWest, has to date, not acted accordingly in this circumstance and continue to flaunt their obligation

#### **Key Facts ;**

**Some \$ 47.9 m AUD of Assets were place into receivership to recover some \$ 23.7 m**

**Given just 24 hr notice to repay**

**Raised \$ 1.7 m AUD in Two (2) working days. Certainly could have paid down \$ 23.7 m with 30 days grace, as per General Business Leading Agreement . Never given the opportunity.**

**The Receivership was a complete surprise, Happened despite a meeting just a few weeks earlier with Senior Credit of Bank West, affirming the course of action I was undertaking to amend the alleged breaches, which was to sell the most valuable asset. The hurried decision in this**

circumstance points to other over-riding factors, such as the Claw-Back Warranty by Commonwealth Bank

BankWest actions to date, suggests a deliberate, systematic , and unconscionable policy designed to subordinate customers business loans ( of Pubs & Developers ) by changing & amending the terms of the loans to such an extent as to places such loans in breach. Then placing such loans in alleged default and breaches at a time of the Banks choosing.

Commonwealth Bank benefits from this through the Claw-Back warranty and BankWest benefits from charging significantly higher interest margins .

**to erode and expend ALL the surplus by keeping the entity in receivership, thereby continuing to incur high costs as a means to subordinate the families right to legal due process and fairness.**