

Submission to Senate Inquiry

"Effects of the GFC on the Australian Banking Sector"

5 May 2012

Economics References Committee

Parliament House

Canberra, ACT, 2600

Dear Senators,

Please find enclosed my submission that relates to how we were treated by **BankWest** after it was acquired by the Commonwealth Bank of Australia during the GFC in late 2008.

In 2003 we purchased two blocks of land in the "golden triangle" of Wahroonga N.S.W. These adjoining blocks of land totalled approx. 4700sqm and were purchased without finance for \$3.5m.

In 2007 **BankWest** approved 2 commercial loan facilities with the value totalling \$5.3m. This money was borrowed to build and complete our home this is clearly stated in **BankWest** documentation.

These loans were secured by various assets.

BankWest would only offer us a commercial loan facility even though the build was for our residential home.

BankWest conservatively valued the property on completion at \$8.5m.

Two other estimated valuations were attained the first at \$10m-\$12m and the second at \$10m-\$11.5m.

As part of the loan agreement a Tripartite Deed was signed by us, the builder and **BankWest**. This

This agreement stated "if the bank takes possession of the site and/or works, the bank **agrees to comply with all of the obligations of the borrower** under the Building Contract while it is in possession but shall not be responsible for any prior breach by the borrower".

Our trouble started with **BankWest** upon our initial drawdown. **BankWest** drawdown payments were constantly delayed, It could take up to 4-5 weeks for a claim to be paid each time a different excuse was given. This in turn immediately resulted in the builder becoming disgruntled and a number of times refused to continue work. The result of this lack of

payment was that months of work were lost on the build and yet interest would keep on accruing.

In September 2008 we found ourselves heavily affected by the GFC and at this stage it was clear that we were going to default on our loans.

BankWest had already stopped paying the builder even though the loans had not expired.

At this point of time although we had received letters advising us of our financial obligations and requests were made for us to contact **BankWest**. Many attempts were made by us to contact the bank in the form of letters and phone calls. Each time no one would return our calls nor did anybody seemed to know who was handling our situation.

The builder by now had walked away.

BankWest increased their interest rates to 18.5% and enforced a Breach fee of \$27k per loan.

It was not until February 2009 we demanded and were granted a meeting with **BankWest** to discuss our situation.

At this meeting we told **BankWest** that we believed the property should be completed and sold. We believed this to be the best outcome for the bank and ourselves as:

- a) L.J Hooker had secured a sales contract for the property (completed) at \$11.5m. This contract alone allowed all debts to be repaid and a profit for ourselves. This contract could not be exchanged as **BankWest** would not agree to complete the build.
- b) We had professional bank valuations completed on the property valuing it conservatively at \$8.5m
- c) We had real estate valuations on the property ranging up to \$12m
- d) A similar house had just sold for approx. \$10.5m
- e) We had collateral in the property.
- f) Although the GFC was occurring at this point the top end of the real estate market in our area was still strong.
- g) We also suggested to **BankWest** that as the property had two separate titles that we could sell one of the blocks in order to lower the LVI and use the funds to service the loan and complete the build. The second title had no building on it and could easily be sold.

The response from **BankWest** was that **BankWest would not consider any further finance** to complete the build under any circumstances.

They would not listen to any of our grievances and told us to refinance elsewhere. The Manager we spoke to was not interested in any discussions and seemed to have already a pre-determined outcome. This seemed to revolve around a reduced valuation and that the house could never be worth the value previously obtained through formal valuations. He also went so far as telling that he thought our house was tasteless.

We believed the property should have been completed and sold as the property was unsaleable in its present state as it had no certifications and building was not complete. In addition, we believe the process of sale did not afford us our rights as a residential family home instead they applied commercial rules when a loan is breached.

BankWest did not contact us again nor would they accept any phone calls from us.

It was not until September 2009 a statement of claim was delivered to us. The following week receivers contacted us and arranged a meeting at the property that we had already moved into.

The result of this meeting was that **BankWest** wanted to complete the building of the house and sell the property under receivership laws. (This as stated above was our original request to the bank nearly 12 months prior except now it would be done under receivership conditions and had been accruing inflated interest charges.)

The following week an eviction notice was served upon us.

BankWest wanted to enforce the eviction notice. Instead the receivers arranged with us that we could remain in the house as my intimate knowledge of the property and its building details were a valuable asset in order to complete the build.

My family had conditions placed upon them which allowed us to remain in our home these were the following

- a) No contact verbal or otherwise was to be made by any member of the family to the builder or any of his tradesmen. Near impossible as I was aiding the receiver
- b) I had to sign a legal document saying that I guaranteed to move out prior to settlement.
- c) I had to sign a Proceeds of Sale document stating that after the bank had repaid all debts the first \$291,180 of profit from the sale would go directly to the builder. (This figure represented the builder's last claim which **BankWest** had refused to pay).
- d) I was required to help with the documentation for the D.A and in many cases had to explain to the receivers how the house needed to be completed or what the documentation meant. (I was happy to do this as I believed that the property would be sold with integrity).

BankWest receivers did not appoint staff who had the experience to complete the build successfully.

BankWest receivers did not follow the D.A specifications correctly.

BankWest then approved the receivers to start the sales process when the house was not complete.

BankWest had the property valued we were not shown any of the valuation figures. (But I was told verbally that it was well below what it should be)

BankWest only allowed a little over 3 weeks sales process to sell one of the premier properties on the north shore. The sales week was the week before **Christmas**.

At the auction there was only one bidder whose opening bid was nearly to the dollar the value of the mortgage. This person by coincidence is a senior executive of one of our largest banks.

This first and only bid was not accepted instead **BankWest** placed a sellers bid and the auctioneer announced "that if anyone paid a dollar more for this property it could be theirs" the bank executive paid a little more and the property was sold.

BankWest upon settlement ignored a Notice of Caveat which had been lodged with Department of Lands.

To this point **BankWest** would still not speak to us.

In April 2010 **BankWest** sent me a letter of demand for an extra \$500,000 worth of charges that they claimed we still owed.

BankWest would still not speak to us.

I contacted the banking Ombudsman and within 48 hours **BankWest** phoned me and advised me that conditionally on me signing a document saying I would not take any legal action against them they would forgive the \$500k.

The end result is that my husband and myself were made bankrupts, we lost our home, wealth, loss of business opportunity, cars and other assets all of which I believe could have been avoided if **BankWest** had acted responsibly and with integrity.

I believe **BankWest** is guilty of the following

- a) Issuing a commercial loan for personal use and then not applying regular home mortgage conditions.
- b) Total lack of communication. Never returned calls or correspondence
- c) Changing the agenda/relationship/communication mid loan without any known reason .
- d) Not investigating and acting on a reasonable sale option when it was available. It would seem they were working to a pre-set deadline.
- e) Appointing receivers after failing to answer our correspondence over previous 7 months.
- f) Charging unreasonable fees and interest rates. Some of which were cancelled after we contacted the Banking Ombudsman. What bank forgives \$500,000?
- g) Under valuing the property for their own benefit. Keeping the final valuation a secret in spite of offers previously that were in excess of the loan.