

Submission to the Senate Committee Inquiry into the post-GFC banking sector

This submission considers terms of reference item d) - the impact on borrowing and lending practices in the banking sector both during and since the global financial crisis.

Background

In 2005 I set up a family trust which invested \$1,450,000 (personal and family funds) into a venue/hotel. It was purchased to pursue an alternative to the gaming model i.e. Live Music Model. I had finance with St George Bank. My relationship manager at that time was Stuart Bush who left to work for Bankwest around 2007.

Stuart Bush pursued my business aggressively for a year or so, based on our personal relationship. He was aware of our complete business and assets, and that our facility matured with St George Bank in 2008. Based on his willingness to increase our facility to provide additional funding for renovations and the fact that we also felt very comfortable with him personally agreed to move our facility and banking to BankWest.

Our business relationship was strong, it also turned into a personal friendship. There was a lot of trust in the relationship.

Bankwest Loan History

We sought a complete replication of the facility with St George Bank including the renovation funds as follows:-

1. \$3,000,000 bank facility
2. \$50,000 overdraft facility in operating company
3. \$55,000 in leasing funds for point of sale
4. Term period of facility 3 years

First offer in August was incorrect as it did not include 2 & 3 in the offer. 1 & 4 were correct.

The second Letter of Offer in September was received shortly after we advised the bank that the trustee would need to be changed as my mother had passed away. We had been advised there would be considerable stamp duty due should I remain the trustee as I was a beneficiary of the trust. As this offer was still in the previous trustee name and we basically disregarded the offer and sought no advice with regards to it. Per the front page I did note it included the overdraft and lease facility amendment.

I had instructed Peter Livers from Slattery Thompson to change the trustee and its registration with the Lands Office. On completion of these changes the banks solicitor Angus Begg forwarded the mortgage documents for execution. No final Letter of Offer was presented at the time but I had spoken with Stuart Bush. He assured me the changes I requested had been made and that the new trustee had been added to the agreement. Under Stuart's verbal advice I executed the documents presented in the presence of and with the advice of Peter Livers... Again no final Letter of Offer was presented to myself or Peter Livers.

CBA Takeover

There was a change of Bankwest legal firm from Angus Begg to Middleton's during the CBA takeover. I was made aware of this thought this explained the confusion around the issue of a final Letter of Offer.

The loan was reissued during period of CBA takeover and a final Letter of Offer was never issued. Angus Begg has been asked a number of times to produce this document without response. Settlement occurred in Dec 2008.

During the GFC period, we received a number of technical default breaches – relationship manager advised “everyone gets these/don't worry.” Based on evidence extreme drop in property valuations figures and provided by Bankwest in senate inquiry, every business on the East Coast would have been in default, based on LVR and EBITDA levels.

Bankwest ‘Working with Customers’

In March 2011 the extended overdraft facility period had expired. The bank wanted this amount to revert to its agreed sum of \$50,000 prior to a new Letter of Offer being made in July 2011. A number of options were being explored to clear the overdraft debt. 1 x Bank Poker Machine Entitlement (PME) sale option / (low value at time due to Willkie report) as well as a JV partner.

In May 2011 the bank called a meeting and introduced me to its ‘financial advisers’ Ferrier Hodgson. It transpires that the banks ‘business consultant’ was in fact a receiver (It may seem naïve, but his actual role was never disclosed and I have no experience with insolvency. I simply had no way of knowing). At no time was it suggested that Bankwest were moving to a point of foreclosing. I understood we were just going through a process of review.

The key for me here is, with 20/20 hindsight, is that no ‘ultimatum’ was ever given. It appears the executioner was getting ready behind the door, but I had never been told. I was never given the business decision: “If you don't do ‘x’ by ‘y’ date, we will have to foreclose on you. My decisions and course of action would have been very different had I been informed that was the banks intention. The option of the bank foreclosing was never on the radar. They never gave me that information or chance.

In July 2011 due to the poor price we had been offered for the PME I suggested that the bank extend the overdraft, we would undertake to sell the PME (after the Willkie legislation was determined) and PME prices returned to the higher market value. I was shortly after issued with a 7 day letter of demand to repay the complete facility \$3,200,000.

Several funding options were immediately sought, as well as a discrete sale through Jones Lang LaSalle. This produced an option to clear our position with Bankwest. A buyer was found “A Sale Heads of Agreement was signed for \$5,000,000 with contracts issue to the purchaser by Frank Back @ BVS. The buyer spent \$15,000 on due diligence, however, withdrew at the last minute as he was advised hotel by his valuer that the business was on ‘receiver watch’. They were referring to Ferrier Hodgson’s appointment by the bank who had been in direct contact with the valuer...

A sale of the freehold through Kelly & Sons was sought at auction but the property failed to reach a sufficient level to settle the bank. We continued to seek funding options whilst the bank continued to impose unpayable default interest.

Bankwest Receivers

The discrepancy in the loan documents was discovered in Aug 2010 at a meeting with BankWest staff at the hotel. The loan was called in 12 months early in Dec 2010. Original Letter of Offer document reviewed was 3 year term. There was never a final Letter of Offer presented and Bankwest have still not provided 2 year term document, they base this entire action on.

The bank agreed to continue rolling the facility over monthly with the view of renewing the facility at the end of 2012 financial year. No indication was given that this would not be the case.

After issuing the 7 day Letter of Demand the bank increased interest repayment from \$16 000 to \$63 000 including charges, adjusted to \$48 000. That is crippling for a business of this nature. How exactly do Bankwest argue this was assisting me whilst in difficulty. It was the cause of my difficulty. An insurmountable burden.

The 'business consultant' appointed by Bankwest to review my position (who transpired to actually be receivers) have interfered with a potential solution / sale of the hotel in September 2011.

Receiver's Appointment

The receivers arrived on a Monday morning knowing my pattern of banking and bill payments. It was a precision plan. I was able to bank my weekend takings, but as I started my weekly process of paying my accounts, I found that my bank account was frozen and I could not make usual payments to suppliers. The money was there, ready to pay them. At Midday, the receivers walked in. They tried to say my accounts were in disarray. They weren't, until the receivers took over.

I still have not been supplied a copy of original loan documents, despite a number of requests over 4 weeks. The lawyers are simply not responding. Yet this is the document that the entire present situation is based upon.

CBA and Receivers Breached privacy – gross and audacious breach' of my privacy in response to the public campaign highlighting situation. 'Extensively reported CBA media releases stating I was in breach / default through missed interest payments. It appears it was a deliberate strategy, in an attempt to lose us both media and public credibility / support.

The receiver served notices unnecessarily upon my chronic schizophrenic sister in full knowledge of her condition. I believe this was deliberate a tactic used to hurt me emotionally. It worked. I understood we were in good faith negotiations with the head of Bankwest legal up unto that point. They were clearly just stringing us along.

Since taking over managing the hotel, the receivers have run out of beer, shortened trading hours, treated patrons aggressively and forcibly removed an international artist Jonas Matranga from stage unnecessarily. They have damaged both the business and its reputation.

Close

The process with receivers has been secretive, deliberately disruptive, bullying and dishonest. I believe Morgan Kelly of Ferrier Hodgson is without conscience.

The bank and receivers have unbelievable power and a ruthless process in place. I feel like I've played a rigged game. The bank has been a smiling assassin. They can change the rules mid-game and your average businessman does not have a thread of hope. There was nowhere to turn. No independent umpire. This didn't need to happen. How can a bank simply decide that a business which is successfully servicing its debt can flick the switch and ruin a family. At this point, I cannot see how our family can ever recover from this injustice. Sydney is set to / has lost its home of grassroots live music. Everything I worked for to build that dream was taken away by a lie, by my business banking partner Bankwest. It's Un-Australian.

