

I am writing this as a last resort really as we have been battling Suncorp Metway for over twelve years and just do not seem to be able to get satisfaction or justice for our claims.

To give a bit of a rundown on us, my wife and I have been in hospitality business for some thirty five years and have been successful in all our businesses. I am now 74 and Maria is sixty nine. Around the middle of 1998 we owned a hotel motel in Richmond, NQ and a citrus farm/brahman stud of 640 acres with a mile frontage to the Burdekin River at Charters Towers. A very valuable property. Our assets were approximately valued at 950k for the farm plus plant stock and equipment. with a value of some 200k and 650k for the hotel which was under lease. We also had an investment block of 16 half acre blocks on the outskirts of Rochampton which we felt was worth about 80k. Total of around 1.5 million disregarding stock and plant. Our bank debt was around 300k giving us a comfortable equity of say 1.2m. We wanted to go back into a business to create a cash flow to further develop our property and spent several months looking before we found what we believed was the best available at the time. We settled on one at Malanda, NQ. It was for sale for 1.1m and we made an offer of 1.05 and went to contract.

We approached a finance broker in Brisbane to see what was required and he later advised that he had verbal approval for finance but would need valuations to support the deal. We asked as to an acceptable Valuer and he told us that [redacted] in Townsville was OK so we contacted him. He agreed to do the valuations but suggested that QIDC were doing this sort of finance and suggested we approach them. I contacted QIDC and spoke to [redacted] who said he was interested and I faxed him a resume of our requirements I requested a loan of 1.6m covered by collateral of the Hotel at a valuation of 650k and the farm at 950k and the purchase property at 1.05m, giving a total of 2.65m covering a loan of 1.6m. I requested a loan set at three years interest only or a loan one years interest only followed by a normal interest and redemption over ten years. This would allow us to proceed with development of our property.

It was arranged that [redacted] would do the valuation and that [redacted] would drive to Malanda with him to assess the property at the same time. After the inspection I rang [redacted] to find out how it went and he said QIDC were keen to do the deal. He said that if the people running it were making a profit the way it was presented we would certainly do much better. During that trip our solicitor was later told by [redacted] that it would take us a couple of years to turn the trade around and three years to sell our property in Charters Towers given state or rural sales in the area. He said he told this to [redacted] during his conversations with him and would testify to that at trial but could not give us an affidavit as he was still heavily involved with Suncorp Metway in his business. I rang [redacted] who said the deal was a good one and he advised the interest that would apply. It was half a percent more than the interest from the Brisbane lender and after talking it over with Maria we decided it would be better to deal on a local basis than with Brisbane. I advised [redacted] and he was not too happy about it.

I went to Townsville for a meeting with [redacted] and his superior [redacted] and we discussed the loan. Maria did not attend. The bank would lend us the money but we would have to agree to sell some of our property within three months to reduce the loan by 400k. This was an impossible requirement and eventually it was suggested that we would have to sell property within six months. I knew this was impossible but had withdrawn my other application for the loan and agreed intending to re negotiate at a later time, I knew that there was no way Maria would agree to the terms. I did not tell Maria what the deal was on my return home as I knew she would never agree to it.

We went to Townsville a week or so later to sign documents and when Maria read the term that we would have to sell property she actually threw the papers back over the desk at [redacted] and told him "you would have to be stupid to sign something like that". This was done in front of

who was there as a witness. Maria was crying and really straightforward in her refusal to sign the papers as they stood. We were in the debate about the terms for a long time and Bath told us that the clause was just a formality and that there was no way the bank would take action if the sale of property did not occur. He was adamant about that on several occasions and eventually Maria agreed to sign. She was still not happy about it though.

came to our property shortly after to have further documents signed by our sons as guarantors as they were involved in some of the property. When James came in to sign he gave a very hard time about having to sell in such a short time and told him the term was just a formality and when the time was reached the bank would just allow the extension of that time to allow a sale. James was almost rude about it and I was almost felt sorry for . However he satisfied James concern. James also questioned as to the possible involvement of a in our accounts. He had heard that she had transferred to Suncorp Metway and we had had trouble with her when she had control of our accounts in our hotel business some time earlier at another bank. told James she was in another department in the bank and would have no influence on our accounts.

Our other son Peter came to the house to sign and again he took to task about the bothersome clause re selling. Again assured him that it was only a formality clause. My last conversation with took place when I walked him out to his car. I said that I was still concerned at the requirement that we had to reduce the loan by 400k at the end of six months and he again assured me the term was only a formality and when the time was reached the bank would not taking action against us.

We took over the Malanda Lodge on 26 October, 1998 and found it to be even dirtier and run down than when we inspected it. A lot of the plant we found to be in bad condition but even with that the motel was an excellent buy given the land area and the quality of the buildings. We had to spend around seventeen thousand on cleaning and essential replacements to even start to present the motel.

We traded well in the first two months and January was also good. We had two cyclones and trade fell to 27% occupancy as the roads were cut at all accesses to Malanda and the Tablelands. I found at the end of the month we would not be able to pay our interest due and Rang to ask that the interest be capitalized to the end of the term as was allowed under the term of our agreement. That agreement stated that we could capitalize a total of twelve payments of interest and or redemption over a ten year period to the end of the term. A very important clause to cover just such a disaster you would think. actually laughed at me and said he had never heard of such a thing. I told him it was in the agreement but did not force the matter. I borrowed the amount I needed from the ANZ and paid the interest.

Unfortunately March was much the same with wet weather and no travelers. We had an occupancy of 37% and most of this was corporate and on monthly accounts. I again rang and requested that they defer the interest due. He again refused. I was able to pay the interest on the 410k loan but could not pay the other. We were then put on penalty interest on the whole loan from that time. The extra interest was approx. 6,000. They did suggest that they would defer the interest for a month only. To me that was a breach of agreement. I did tell them that we would be able to pay all the arrears under normal rates by the end of August but this was not acceptable to them. Subsequent trading showed that had they capitalized the interest as requested at that time we would have been able to pay the future payments and never have had the same problem again.

I kept advised as to our progress and felt we were doing very well. We had been putting as much as we could in to improving linen and fittings. We had a call from I think in early April

to tell us he and [redacted] were inspecting the property and when they arrived I was surprised they did not seem to be very interested in the property. We sat down to a cup of coffee and we were staggered when [redacted] said that we had eight weeks to sell our property or they would sell us up. They said they did not care what was sold as long as the debt was reduced. On one occasion Maria started to say "but [redacted] told us" at which time [redacted] interrupted saying "I don't care what [redacted] told you. This is how it is'. I looked at [redacted] expecting and hoping that he would say what he had told us but he never spoke or looked at me. They left soon after and I never had a chance to approach [redacted]. I rang QIDC several times soon after but [redacted] was never available. We believe that he was transferred to Brisbane shortly after.

We were advised some short time later that our accounts had been transferred to Brisbane and were under the control of [redacted]. She was the object of James's debate with [redacted] at the farm and we had bad relations with her in the past. I rang to verify that this was true and found it was. I had a conference call with her and [redacted] and they told us we were required to sell [redacted] now by 30 Sept. or they would sell us up. They had no interest in what we were now doing. At one stage during the conversation [redacted] said that we had been trying to sell the farm for years while we were with the Commonwealth and under her control. This was not true as we at no time any intention to sell the farm. We felt that that information was really a breach of confidential information and that [redacted] should not have spoken of that. We suggested this to the bank and indeed [redacted] was supposedly taken off our case but we felt that damage had already been done. I wrote to the Banking Ombudsman soon after this to intercede on our behalf. The offer of the extension of the term to repay to 30 Sep. we understood would require us to repay the whole of the loan at that time and stipulated that we would have to agree to absolve the bank of any wrong doing and would not allow us to take any legal action against them. This was not satisfactory to us. Our solicitor at that time was [redacted] and he felt he could assist by making an appointment with the General Manager for Suncorp and Maria flew to Brisbane to speak to him. He would not see her as I had involved the Ombudsman in the proceeding and he required a letter of apology from me and the suspension of the claim to the Ombudsman. I suspended my claim to await outcomes. During all this time we were still on penalty rates almost double the ordinary rate.

On 26 August our solicitor suggested we get a Barristers opinion and his opinion was we had a good and winnable case but had not at that time shown any losses and we would have to wait until we were sold up to have a case and sue for damages.

We were under pressure by the bank to advise if we were going to agree to their terms and we felt we could not as we would be in an even worse position and would almost immediately be in default. We also had to agree again to not take them to court then or at any time in the future. Not acceptable as we felt we had been wronged. We felt that [redacted] statements to us were the whole crux of the matter and that had they allowed the deferment of the interest as requested and allowable under the agreement vindicated our stand.

Maria had a meeting in Brisbane with the bank on 14 Sep the bank would allow us to pay the rates for the property and give us money for subdivision. The outcome was an offer from them to extend the loan for another six months as usual subject to conditions. Again we had to absolve the bank of any wrongdoing and abstain from any future legal challenge.

We chased finance and sale prospects in an attempt to clear the way to proceed elsewhere but found it difficult with the pressure from Suncorp and the fact that at that time we did not even have a full years trading figures. Our figures were good for the year showing a nett in line with our budget forecasts. We were shoeing a nett of 165k but finding it impossible under our penalty rate of interest. In February and March 2000 we were again faced with cyclone and flood situations and lack of trade. We again requested that the interest be deferred and again were refused. I did advise

them that the collateral was good and safe as the value of our hotel in Richmond was really trading and was increasing in value.

In March 2000 the bank issued a letter of demand and I reinstated my claim to the Banking Ombudsman. By this stage we had changed solicitors. Through our approach to the Ombudsman the bank offered to forebear on forcing action until 15 August 2000. Again the terms were not acceptable for the usual reasons. To further complicate matters our hotel at Richmond burned to the ground that week. We were left with a bare block of ground of no value until it was rebuilt. We could not approach other lenders until the hotel was rebuilt. We rebuilt the Hotel and was reopen on Xmas eve 2000.

We sold the farm under duress in August 2001 to allow us to reduce the debt and received 530k a loss really of 400k but that was the best we could do. We then approached NAB to refinance or remaining properties of the Motel and the Hotel/ motel in Richmond. We had reduced our debt by the farm sale and applied for 1.25m and were approved for the loan. When we advised Suncorp we were told that the debt was now 1.45 so we were unable to carry through. The Mud Hut was later sold by the receivers for 520k. Had they allowed the refinance they would have received 1.25m whereas in the final sale prices they received only 1.065m

We attended a meeting with Colin Neave, the Ombudsman in Brisbane on 9 August 2000 and the bank agreed to defer acting on our account until 23 Mar 2001. Mr. Neave told us that something about the whole business smelled very bad to him but he was unable to take any action against the bank. We were definite that we would not sign anything that would stop us from taking legal action against the bank and he agreed with us on that point Under the terms of their agreement I believe we had to sell all our property by 31 Mar 01 which obviously impossible and we declined the offer. The extension was a help but we were unable to refinance or sell any property as the Mud Hut Hotel still was not rebuilt. We tried to sell any or all our properties without success and could not refinance until the hotel was running.

Suncorp put receivers in to our properties around 26 Mar 2001. They retained us to continue to run the Motel at a retainer of \$500.00 a week for the family. We accepted as we felt we would at least see that it was run well and we should see the benefits of that. We ran it until late March 2002 but still attempted to sell or refinance. We did receive a contract for sale with a trade of 400k and 600 cash but were told by the receivers that it was not acceptable. The receivers subsequently sold it for 545k apparently based on their own "valuation" around the 500k mark. This for a motel trading well for which we had a valuation of over a million and they had financed the same motel for their original owners in 1996 to a purchase of 1.1 million. What a joke. As stated earlier we also had a refinance offer just prior to their removal of us and the subsequent sales which would have netted the receivers a better result. The sale price for the Mud Hut was also ridiculous as the new building alone was 400k with the Motel section being untouched by the fire and the trade in the business running at over 16k a week plus TAB and Pokies. The rental for the hotel was 78k a year clear to owner clearly indicating a value of over 800k.

Also sold by the receivers were sixteen half acre blocks on the outskirts of Rockhampton . We purchased these in June 95 as a long term investment as they are adjacent to Transport Depots and the rail line. We paid 76k for the parcel for eight acres. The receivers sold them in Sept.02 for \$18,500 and they were then on sold in March 07 for 205k.

When the receivers took over we were in the situation of have no money available but still having to pay for stock and accounts which were due to that day. Money, stock, incoming accounts for the times prior to the takeover became the property of the receivers. We had to pay power, phone, all accounts prior to that date with the only income being the 500 a week we received from the

receivers. We worked there for around a year and moved south to have more chance of work which was very difficult at aged 64. We worked running motels around Brisbane and paid off all our debts from the business which were in the vicinity of twenty thousand and solicitors costs over a couple of years. We have continued to pay solicitors and barristers fees of approx 120k to date. Our legal fees are paid up to date.

We have been on the pension for the past several years and have assisted by our family and friends in covering legal and other costs. We have a case ongoing against Suncorp Metway claiming misrepresentation in inducing us to sign the documents where [redacted] was deceptive and misleading in telling us the the clause was merely formality. He told us that several times and told our sons the same thing.

We also claim that they acted unconscionably by allowing us really no chance of success after such a short time. We had a proven track record for business management and really were given no chance. They were without conscience and made no real attempt towards a fair outcome.

As it turned out we found that Suncorp Metway were the financiers of the people we bought the Malanda Lodge and had financed the deal then for 1.1m. They were indeed [redacted] but they should have given us a fair chance. They must have had valuations for that deal to go through but having been apparently unhappy with that client really appeared to have us tarred with the same brush. An indication of their attitude was apparent when I had a conversation with [redacted] during some negotiations when he said "I don't know why we even bother with people like you". Word for word. At that time Maria went to Cairns and caught a plane to Brisbane. He had quite a shock when she met him and took him to task over it. He did have the last laugh however as during the following exchange of word he told Maria he would see us broke. He did have the last laugh.

So after ten years or more of battle we finally have reached the later stages of our battle. We were to go to mediation in Brisbane on Monday 24 March but unfortunately Maria is in a very bad way with depression and there is no way she would be able to travel or cope with any more stress. . Somehow we have finished with a claim for Equitable damages for the excess interest and costs charged by the bank. This was calculated by a forensic accountant at 571k plus our costs etc. The claim does state "and damages" but it now appears that we cannot claim any damages. This I cannot understand. You can claim damages if you fall down steps but here we have a case of the loss of property, future for our kids and grand kids. Thirteen years of stress, hardship, loss of income and really the worst of all a property which way to us the main thing in our lives. Conservatively I would say that we should have been sitting on around five million had this not have happened and we can claim nothing. Wrong, wrong, wrong. If we can show fraud and I believe we have a good case we can claim so we now wish to pursue that angle as all the requirements of AICS seem to be obvious.

If this is indeed the case there should be something done to correct the situation. There is no support for small business in these situations. Bank robbers, murderers, asylum seekers, virtually anyone can have access to legal support but not small business. This is a situation well known to the banks and they make sure that when they move on small businesses they are ruthless and make sure you do not get a chance to take them to court. They exert pressure at all times whether it means sending out distressing notices at the end of each day or on a Friday afternoon to maximise the stress on the recipient. You will find they are never available on the days they send these items usually by fax or email. They are the worst people in the world to deal with and have less conscience than a terrorist.

We were only advised on Wednesday that the claim for Damages was for the equitable losses only. This was a complete shock to us having understood all along that the claim would be for our losses. We are told that we cannot show our losses but surely our losses are very easy to assess and

obvious. We put up all our properties with a nett value at that time of at least 1.2m. We lost everything and more. All of this results from the misrepresentation of [redacted] to four of us and repeated several time in front of Maria and myself. I feel we are justified in claiming the losses of our property plus damages for the then years we have suffered because of the banks dishonesty and deceit and should at least be able to put forward the claim. According to our current legal team we are limited to the exact amount claimed in the forensic accountants report and no more. If we agree to accept that we then must sign the always there indemnity to the bank. If we accept the banks offer at mediation that is that. If we do not and go to trial which I would prefer we can still only achieve the amount as claimed. No damages.

Our claim seeks

- (a) equitable damages for unconscionable conduct,
- (b) Damages pursuant to s.12GF(1) of the ASICS Act.
- © Interest under the Supreme Court Act 1995.

Importantly in his statements in reply to our claim as to [redacted] misleading and deceptive statements to us, he has never denied that he did make them as we explained. Indeed at one place he actually admits that he “may” have told us things as we said. What we are seeking is advice as to whether you agree with that summary. We are not satisfied that it is correct and are prepared to change the claim if there is a chance the assessment is wrong and someone has the courage to take on a particularly nasty bank..

I hope this is clear and understandable. It has been very difficult as we are only battlers and have worked hard all our lives only to come across something like this when we should be on a beach in a deck chair with a stubby in one hand and a fishing rod in the other. We are not wingers, just stupidly honest and expect others to be the same. All the claims stated in this document are true and honest. There could be a small variation in the times and date shown but it is all the true facts.

Maria suffered a very serious breakdown when we were told in a phone conference with our legal team that our claim was to be restricted to equitable only and we were granted a postponement of up to a month to give her some time to recover. We have been advised by our solicitors that the parties have accepted that Maria is unable to travel and we will supply them with the necessary Doctors certificate. She is currently receiving counseling We are to advise them when she is OK and they have suggested a month. We have advised that we believe she will be available on 23 April. We have also advised our solicitor that we require the claim be amended to include the losses of our properties value 1.2m and damages personal or what ever of 1m. He is not happy at this and feels we cannot show fraud but I feel we have to pursue this. We are happy for this to go to court to show just how dishonest this and apparently most Banks exert their unfair influence over good honest people only trying to improve their lot in an honest endeavor.

