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Committee Secretary  
Parliamentary Joint Committee on Corporations and Financial Services

**Submission by Robert Fowler on behalf of Marie Anne Fowler and myself Robert Fowler in respect of the treatment accorded to us by the ANZ Bank upon the collapse of Opes Prime Stockbroking**

Distinguished Senators and other parliamentary members, Thank you for allowing us to explain some of the details surrounding the Opes Prime collapse from the perspective of a retail investor who have had their retirement funds of \$1.5 Million stolen

We were not naive investors in as much as we understood margin calls, gearing, and the share market, our downfall was the deceit of the ANZ Bank and its surrogate love child Opes Prime. Without the support of the ANZ bank, Opes would never have gained the oxygen it needed to survive.

Unfortunately there has been a great deal of misinformation about Opes Prime due to inaccurate reporting, corporate spin, sensationalism and details peddled by vested interests that have created in the mind of the general public that all persons connected with Opes Prime are crooks and persons of dubious character. Every time Mr. Gatto's name appears in the media, acting on behalf of his clients/friends, journalists are quick to lampoon him and effectively the genuine Opes creditors.

The reality is that Opes creditors are a disparate grouping who chose to deal with Opes Prime for a variety of reasons. It is not my wish to speak on behalf of or to represent others but to explain how my wife and I, as retail investors became involved in a business operation that was being run on lies and deception purporting to offer a margin lending facility but what in effect the Federal Court have determined was an AMSLA arrangement run in conjunction with the ANZ Bank.

My wife is using the computer to complete a submission to maintain her immunization certificate renewed every three years, the costs of renewal are just under \$600.  
It is desirable that she maintains it to get a little extra income outside her normal duties as a senior nurse.

Unfortunately studying at the age of 67 years does not come easy, but is important in meeting our daily living expenses.

The monthly interest factor on our mortgage is \$3000 plus, and taking into account other expenses we are left with very little money at the end of the month.

Under the proposed scheme of arrangement that is being promoted, if it is passed, our settlement will be enough to discharge our mortgage and leave us with \$30,000, the stolen amount of \$1 million will be retained by the ANZ.

Senators, you may well ask what this old fool is on about , well let me explain, my parents and I came to Australia on assisted passage (the ten pound scheme) from the UK, the Victorian Railways were in need of skilled tradesmen. My parents had as total assets four hundred pounds, a small amount of furniture and an entry to the best country in the world which welcomed them with open arms.

Since that time we have as a family worked hard, paid our taxes and complied with the laws of the land. I have cared for my ageing parents until they passed away ,and in the meantime accumulated enough by work and investments to have sufficient to allow a comfortable retirement for the two of us until the time comes.

We are not crying poor, just asking for some natural justice, and a criminal wrong to be righted. Then we can try to pick up living a normal life as this matter has consumed us since the twenty seventh of March 2008. The Day the world stopped for us!!!!

Quite honestly, I am at my wits end, as I do not know where to turn to if this scheme is allowed to pass. The ANZ Bank has had some of the most cunning and astute legal draftsmen working on this scheme for over twelve months and I find it truly galling that our legal regulators, be they ASIC, APRA or ACCC are not prepared to take action and demand that the genuine creditors be reimbursed. There are a number of reasons that I believe that have prevented action being taken and whilst it may not be palatable to some they must be ventilated so the general public can get a true perspective on this financial scandal

I will not attempt to offer a full history of the Opes Prime Group but present some information gleaned from the Web, and what is on the public record

Thanks and reference's to the Australian Financial Review 12/6/08

### **Opes Prime: a Chronology**

The saga, key players and events in the rise and fall of Opes Prime.

By googleing the above will detail the chronology from 2001 when Smith and Emini established Leveraged Capital, up to March 08 when the ANZ appointed Deloitte as receivers and the Opes directors appointed Ferrier Hodgson as the administrators. The link is provided below.

[http://www.afr.com/home/viewer.aspx?EDP://1213241910778&magsection=news-specials&title=Opes+Prime%3A+a+chronology&source=/\\_xmlfeeds/specials/feed.xml](http://www.afr.com/home/viewer.aspx?EDP://1213241910778&magsection=news-specials&title=Opes+Prime%3A+a+chronology&source=/_xmlfeeds/specials/feed.xml)

This web page identifies the Directors and the players who were largely responsible for the implosion including Mr. Chris Murphy and his delinquent margin loan account and Mr. Norman Seckold, whose request for return of stock triggered the liquidity crisis, prior to Seckold requesting return of his stock the Directors had been able to conceal the fraud caused by Murphy and the ANZ 8 by manipulating the creditors accounts.

In January 2007 I subscribed to the on line trading platform Trader Dealer, which enjoyed a reputation as being an efficient method of buying and selling shares in real time, using the web-iriss platform.

In the course of dealing with Trader Dealer I enquired about obtaining a margin loan, and was advised it was possible. Ms Gwen Henniker, who I later found out to be the Manager and a Director of Trader Dealer handled the request with what turned out to be the parent company, Opes Prime, which held a 70% ownership. This was the first time I had heard of Opes Prime.

Details of my portfolio were submitted to Opes Prime by Henniker and I received a response, the email detailing the loan value ratios against each stock and the interest rate applicable to the margin loan. The communication was originated by a Mr. Dean Boyle, who I later found out to be the Chief Financial Officer.

After confirming my acceptance of the LVR's and interest rate to Ms Henniker, I was faxed a number of forms to establish my credit worthiness and identity.

I later discovered these forms were part of a Financial services agreement, which was never forwarded to us.

Amongst the faxed forms was a refinancing instruction form and collateral lodgement form requesting we transfer our holdings to ANZ Nominees Ltd PID 2005, as an off market transfer. I was advised by Henniker that the Portfolio was lodged for safe keeping with the ANZ and it was in safe hands.

On the twenty fourth of January 2007 I received a letter from Justin Benoitin confirming the account with Opes Prime was operational and advising of the facilities available, vis

- (a) Financing facilities on listed equities
- (b) Security Lending
- (c) Exercising of equity options for executives of listed companies

I had no interest in the latter two products and was comfortable that I was receiving what I requested, a margin loan facility

Transactions were effected relatively smoothly until I opened the computer on the 27/3/08 to log onto the Trader Dealer website and discovered the site was down.

Investigations revealed something was radically wrong and the next twenty four hours painted an ominous picture.

We discovered that our securities, lodged through Opes into ANZ Nominees were not held in trust on our behalf but had been used as security for Opes to conduct an AMSLA arrangement with the ANZ. This information was never communicated to us at any time.

The news filtered out that this was an absolute transfer of title to the Bank and that our only claim was against Opes Prime stockbroking. My world had effectively ceased to exist

As the situation started to be discussed in the media, the reality dawned on us that we had been reduced to a state of penury. my mind vacillated between depression and blind rage, how could this happen?, who was responsible?, was this a step back in time to a Dickensian era when Banks could do what they wished, surely one of our largest banks could not allow this act of corporate theft to remain without making an effort to contact the persons who had been disposed of their net wealth.

It would be an embarrassment and a reflection on the present government who have championed the big four Australian banks, to allow them to strengthen their bottom line by condoning the robbing of the elderly and putting the more vulnerable in such a position that they take their own lives. A confidential submission that has been lodged to this committee will verify this statement.

In an effort to address this obvious injustice I contacted Salvatore Algeri, a partner in Deloitte, the ANZ appointed receivers of the Opes Prime group, offering to payout the margin loan and recover the shares

I was advised this was not possible, the shares were no longer mine, they were in the process of being sold but if I wanted to regain the shares I should contact certain brokers and purchase them "at a very good price"

Approximately one month later class action solicitors commenced to tout for business and there was no shortage of enquiries. The Liquidator was quick to offer a warning about signing up to a class action for a variety of reasons, not the least being a loss of between 25-40% of the recovered amount due as commission to the financiers of the class actions.

Currently there are two law firms running class actions, history and hindsight will show their effectiveness in assisting creditors obtain a satisfactory outcome. My opinion is, in this instance they have been responsible for destroying whatever chance there was of the retail investors entering into serious and meaningful negotiations with the bank for recovering their funds

I regard myself as a retail investor , and the actions run by these law firms has been on behalf of sophisticated investors , to date their results have been less than fruitful for their clients, but not for the law firms themselves.

Family, Friends and Acquaintances are at a loss to understand how all this transpired. how a 70 year old and his 66 year old wife , living a modestly comfortable life, having had sufficient means to enjoy the basic comforts of life one looks forward to before wooden box time is suddenly reduced to extreme poverty.

My explanation to them is that we have been lied to and deceived, the financial system designed to prevent fraud and malfeasance has been found wanting through a combination of laziness, stupidity, and political interference.

We are currently witnessing a scramble to close the proverbial stable door after the horse has bolted by enacting further legislation. Threats are being made of harsh and draconian penalties in the future.

One finds it hard to take these words seriously unless there is a concerted effort to recapture the runaway horse.

What is the point of enacting more legislation if the current legislation is being ignored!!!!

### **Opes Prime Stockbroking**

Ran a business model that was not suited for retail investors. Knowingly used lies and deception by offering margin loan facilities that were not margin loans. Hawked and touted the margin loan concept to stockbrokers and advisers, who received commissions on clients introduced to Opes Prime, built into the monthly margin loan interest charged to the client was an amount that was rebated to the relevant stockbrokers or advisors. In the early stages of operations, Opes were able to maintain liquidity, as the AMSLA arrangements with the ANZ provided more funds than was lent under the margin lending arrangement. Added to this was the interest rate differential between what the client was charged, and what was paid to the ANZ.

There is evidence to show that ASIC was aware that this business model was being promoted to retail investors but elected to do nothing to make the general public aware of the inherent risks this business model exposed them to.

### **Opes Prime Stockbroking Directors**

Lirim Emini was a senior person at ANZ McCaughans securities desk and introduced the AMSLA concept to Opes, utilising it with the securities lending department of the ANZ.

The famous eight gardeners (securities lending personnel ) who were stood down (sacked) were involved in margin lending with Opes , running delinquent accounts , together with Chris Murphy , the well known Sydney criminal lawyer This is the primary reason for the Opes implosion ,together with the redemption and withdrawal of funds by Norm Seckold who one can only presume became aware that Opes was in trouble and wanted his shares back. The writer can only wish he had received similar timely advice. A diligent investigation by the Liquidator will reveal that a Ponzi Scheme was being run by Opes, so short of funds were they, in spite of the account falsification the firm was illiquid, as well as insolvent. You can be sure if the scheme is voted in, no action will be taken against the persons who caused the insolvency nor will any further information on the working of the company and their daily communications with the ANZ be revealed, that AMSLA's were being marketed as margin loans

It was reported that one employee, sacked by ANZ, worked on the Opes account, had a personal account, a stake in the planned listed Opes company, closed his account down and sold stock just before

the bank called in the corporate doctors and told an Opes client not to worry -because the bank would support them

## ASIC

Were fully aware of the business model and the dangers it represented to the clients. It is hoping and praying a settlement can be effected and it will all go away

The current Chair of ASIC, Mr. Tony D'Aloisio was a former managing partner of Mallesons, the firm of solicitors who represent Ferrier Hodgson, liquidators of Opes Prime. One would wonder what fees Mallesons have drawn from the ANZ Bank over the past few years, indeed what fees they will generate in the coming years if they can carry this scheme over the line Whilst I do not cast aspersions on Mr. D'Aloisio's commercial competency, his past history raise serious doubts on his capacity to present an impartial judgement in this matter. One legal commentator once suggested that Mallesons staff would have followed D'Aloisio, who became the firms CEO in 1992, of a cliff, such was their loyalty. .Loyalty is one thing, misplaced judgement is another.

ASIC have been an observer in the mediation between Ferrier Hodgson and the Banks for several months. .ASIC has said on public record that if a scheme of settlement is not approved by the creditors it will take action against the ANZ for breaches of the corporations act.

Strong rumours are circulating that senior ASIC will not take action against ANZ as it is a political directive that the bank not be charged, but the personnel lower down in management do not share this point of view .Could it be that the four pillars policy in times of the GFC (global financial crisis) maintaining the integrity of the major trading banks means the ANZ's reputation must not be sullied by charges of malfeasance, brought on by a government regulator

An examination of ASIC's past history of actions and prosecutions speaks volumes that it is an ineffective and impotent organisation that is worthy of the scorn and derision it attracts

To add insult to injury, in response to my detailed letter of complaint to ASIC, they forwarded a leaflet advising "Your complaint counts" and a leaflet on Scamwatch  
My complaint to ASIC was fielded by Susan Conley, Analyst, Misconduct & Breach Reporting., who advised that Nicholas Roper is in a special team to investigate potential breaches of the Corporations Act. Eight months have now elapsed but no word from Nick

The writer has been advised that action against the Opes Directors is being delayed until the ANZ scheme of arrangement is resolved. One can only speculate that these actions will offer further information into the connection between ANZ securities lending and the Opes Directors.

Once (if) a scheme of arrangement is entered into, then all the murky, dishonest dealing will sink without trace, ANZ is exonerated, then the captains of industry can have their names submitted for the next Honours List, sorry if I sound bitter, The very government body responsible for protecting the vulnerable has abandoned the retail creditors who have a bonefide case for restitution, but have neither the authority or funds to obtain a fair and just settlement.

Make no mistake, The ANZ has profited handsomely from the sale of our shares compared to what it proposes to return by way of the scheme.

Some may call it opportunism, I call it Out right theft

## **ACCC**

Their response to the Opes affair is "it is not our job let ASIC do the work" Seems misleading and deceptive conduct now have a new meaning

The writer is of the opinion that there are grounds available to pursue the bank however it may again be there is no political will to take action or is it in the too hard or too big basket.

Opes prime were advertising margin loans, were offering margin loans, and were confirming your margin loan is now operative.

By using its powers it should be able to question a number of persons to connect the dots that directly link ANZ to Opes Prime and take the appropriate action.

It is absolutely sickening that that another government agency is sitting on its hands, not fulfilling the tasks it is required to perform

## **Deloitte, the Receivers**

Appointed by the ANZ bank, they are beholden to the bank

.At the recent Federal court hearing a colleague asked two employee's of the receiver when Chris Murphy was going to be called on to repay his outstanding margin loan, and was told that no action until this scheme was out of the way.

It would be extremely embarrassing to have Murphy in the witness box the information he could reveal would shed a great deal of light on the relationship between himself, Emini and the ANZ bank.,

I would venture to offer an opinion he will never be charged ,nor called upon to repay the \$100 million outstanding , what is particularly galling is that the writers \$1.5 million is helping to subsidise the banks loss.

## **APRA**

Australian Prudential Regulatory Authority (the mirror, we are looking into it). They know the details but to date have remained mute, is this matter in their bailiwick, who knows, do they care? I suspect not.

Emails a letters to Mr. John Laker OA, were answered by Mr. Christopher Colwell, who explained the responsibilities of APRA,

Unfortunately the prudential management of the institutions we regulate does not extend to investigating the scam that was in operation between Emini at Opes Prime and the ANZ eight, again, do they care, I suspect not

## **The Auditors, Ernst and Young**

Not a great deal has been said about the Auditors or their procedures. One would think it timely for the liquidator to do a forensic review of when Opes became initially insolvent , taking into account the fraud committed by Emini and his staff in the falsification of the company accounts

It should be born in mind that Opes prime was on the cusp of being floated on the ASX as a public company.

## **The Liquidator, Ferrier Hodgson**

Of great concern to many creditors is the way the Opes matter has been conducted, from the time the directors of Opes Prime called in Ferriers, prior to them being appointed administrators to the present day when they were appointed Liquidators.

The mere fact that Ferriers are handling this matter is a total disgrace. They are on the ANZ panel and have an immediate conflict of interest, unfortunately they were appointed by the directors, and I suspect the majority of creditors at the meeting were not made aware of the relationship

I regard the closeness of the Liquidator (ANZ Panel) ASIC (ex managing partner at Mallesons), the liquidator's solicitor, Mallesons acting for the ANZ, as having to close a relationship, which is not in the interests of the creditors.

No one is aware of what went on at the endless mediation meetings between ANZ, ASIC, Mallesons and Ferriers, least of all the creditors.

All that has been revealed to date is that the cash offer contained in the scheme of settlement is the same as what was the value of the illegal settlements seized by the bank on the 27/3/08

A high level of dissatisfaction relates to the failure of Ferriers to act when ANZ seized the securities under a hastily revised drafted arrangement and took preference whilst Opes was clearly insolvent

The maxim "possession is nine tenths of the law" appears to have been adopted by the bank

Skillfull legal maneuvering has ensured the Liquidator has no funds to represent the creditors fairly, all he has been able to present is a scheme drawn up by the banks to offer 35-37c in settlement of their claims providing they fore go the right to take action against the banks, brokers and advisors, Also lost is the right to exercise the extensive powers of investigation granted to him under the corporations act.,

Despite being asked several times both publicly and privately the Liquidator cannot, will not give a guarantee of what the dividend will be to the creditors, it has been suggested that it could be as low as 20c in the dollar, this has never been denied, yet he is asking for creditors to relinquish their rights at law for taking action against a third party for an indeterminate amount, the true sum he is not willing to disclose.

The costs of floating this scheme of arrangement is \$1 million dollars ,financed by the ANZ .What a brilliant concept , the legal department of the bank, the solicitors for the liquidator and ASIC will be ecstatic if this scheme is voted in. They will have served their masters well, and I am not referring to the creditors.

That such a scheme has not been used before is of little consequence to its admissibility, the unfair clauses introduced into the scheme by the bank identifies the characteristics of the sponsor.

The big end of town never misses a chance for a free kick, particularly if it is in the guts of those less able to defend themselves.

While it is my opinion that the scheme is a giant scandal, the courts may feel that getting a little money in the creditors pockets after nearly two years, no matter how little is better than protracted litigation, irrespective of how strong certain creditor groupings may feel their claims are.

It is fair comment to say the majority of Opes creditors are dissatisfied with the liquidator and were it an easy task they would have been removed long ago. Their closeness to the ANZ has been a stumbling block to getting a resolution to this situation

The millions of dollars in fees they will reap will no doubt play on the creditors minds as they decide whether to accept approximately one third of the valuation as at 27/3/08 in the event of the scheme being voted in

### **The Class Action Lawyers**

The writer spent three days recently in the Federal Court recently, observing a battery of QC's and SC's at \$10-15k per day discuss the proposed scheme that the Bank is paying the Liquidator \$1 Million to promote

Of particular note was the ANZ's retained counsel, a distinguished QC, reputed to charge fees of \$15k per day who has mounted a vigorous and well constructed defence of the banks interests. That the bank can marshal a source of indefatigable legal fire power speaks volumes, Word in the legal profession is that anyone accepting a brief on behalf of an Opes creditor can be assured of not receiving any future work from the ANZ.

It was an unedifying experience from the perspective of a small retail investor, Self aggrandizement by the class action councils at the expense of the non litigating creditors.

One day was devoted to so much legal fol-de-rol and humbug, endeavoring to maximise the return to the funders, the creditors who they purport to represent became a side issue, all this from the inequitable sum being offered by the banks

A veritable feeding frenzy, with snouts in the trough

The realisation by the class action lawyers that they have run at best, marginal cases, some completely unwinnable, but non the less financed by the Opes creditors pool and are now endeavoring to obtain a settlement of legal fees and commission on class actions to withdraw as the costs to mount a case for significant recovery could run into tens of millions of dollars if the cases are unsuccessful

### **The Creditors**

I repeat, they are a disparate grouping, from corporate high flyers who knew exactly what AMSLS's were, went into dealing with Opes up to their ears in stock lending, down to the small retail investors who were put into Opes by their brokers who were anxious to scalp a half a per cent commission on the margin loan interest plus an introduction spiv .

I contend that it is grossly and manifestly unfair that the small investors should effectively be subsidising the large sophisticated investors by the Liquidator grouping all the creditors in one pool and proposing to make a distribution of equal amounts to all creditors especially when they dealt with Opes on the basis that they wanted an AMSLA agreement also ,how many creditors were dealing with Opes who were wanting the Executive Option facility , also that we are being asked to fore go the right to take action against those responsible for recommending the scheme and profiting from it simply rubs salt into an open wound.

Last but not least, the ANZ Bank.

Without the ANZ bank financing Opes on a loan to valuation ratio of 90% on the securities lending contracts Opes would never have existed in the form it did.

To suggest that the ANZ had no knowledge of what Opes operation was false in the extreme. Securities lending at the ANZ knew every detail of the Opes operation , the type of share they were lending on, the



type of person dealing with Opes, and that the lending was being done on a margin loan basis. The fact that the infamous gardening leave persons were using these facilities is clear evidence.

Further corroboration is provided by Anthony Cahill, moved from the mortgages division to the financial products division wondered how the bank would sanction Emini, borrowing money at 90c in the dollar with stocks as securities. In a rising market he elected to do nothing until Tricom got into trouble in August 2007.

It is a chilling thought that for a person who only wanted a small margin loan (15%) to build a portfolio to assist in retirement his entire portfolio has been stolen, the rational being you will be responsible for Murphy's and the ANZ Six's debts. In actual fact I was reducing my margin loan and had sold certain stocks but the sales were reversed to allow a greater valuation to be seized.

Perhaps others may also have seen Mr. John McFarlane, the former CEO of the ANZ Banking group on ABC Lateline Business 25/6/09 being interviewed by Alli Moore as he attempted to defend the bank's risk management policy whilst under his leadership. A more purile defense I have yet to hear from a banking CEO. What is risk management? What are internal auditors for? One does not wait till it hits the fan, one goes looking for things that can cause damage either by oneself or by delegated staff. He claimed he had never heard of Opes Prime, Chimaera, Tricom and Bill Express till they made headlines.

Words fail me. Who does he blame for these happenings. It is the CEO who must assume responsibility for ALL that happens on his watch. No amount of ducking and weaving can shift the blame that he was primarily responsible, they did not happen in a vacuum.

<http://www.businessspectator.com.au:80/bs.nsf/Article/Former-ANZ-chief-defends-risk-management-record-pd20090626-TCJ83?OpenDocument>

<http://business.theage.com.au:80/business/mcfarlane-has-regrets-over-opes-20090713-divc.html>

A little introspection by Mr. Smith, who is now judged to be the maestro of this Grand theft. Even at this late juncture it, would be timely to reflect on the phrase "All bankers are Bastards". He may feel he is giving bankers a bad name, something in this financial climate that is not difficult to acquire.

Should my criticism of Mr. Smith be deemed harsh, a word in his defense, this matter did not have its genesis on Mr. Smith's watch, Mr. McFarlane must bear full responsibility, Smith merely inherited a sloppy run ship, where the inmates had been running the asylum, even so one would have to question Smith's judgement under pressure when the realisation dawned upon him that there was fraud at Opes Prime, and that it became apparent that ANZ employee's had a close, nay, special relationship with the fraudsters his first action was secure the bank's interests, beggar the clients interests and then conduct a firesale, offering stocks via their brokers at special prices to select "mates"

In another time and place and perhaps with the benefit of hindsight, Mr. Smith would have thought through the consequences of this action and its attendant ramifications, leaving the bank open to litigation for the claims value of the clients portfolio's plus claims for specific damages. Perhaps he would have allowed the retail clients to repay their margin loans retained their goodwill and acquired their business as clients of E Trade.

There has not been one financial publication, journalist, or website that has condoned the action the bank has taken, in the court of public opinion the bank has been tried and found guilty.

This stain will remain forever more on the character of the ANZ, and be an albatross around the neck of Mr. Smith, the CEO.

A straw man has been constructed by saying "look at the market, see what would have happened if you had have held onto your portfolio"

The truth is, one would have to be foolish to accept this proposition, persons were continuously adjusting their portfolio's indeed the ASX rose quite considerably in May 2008 ` however the creditors were denied the right to take action due to the ANZ forced sale and seizure.

The plain truth is the loss was crystallized on the 27/3/08 when the portfolio's were seized and onsold.

I am still waiting to be advised by the ANZ, why an offer of 35-37cents in the dollar is sufficient to make the retail creditors vote for this scheme, perhaps the public relations firm hired to spruik on behalf of the Bank will be as persuasive as Herbert Elliot?

In todays Financial Review, an article about Herb Elliott possibly put out by Elliott's solicitors saying the offer by the ANZ is as good as it gets, offering an argument that the creditors should vote in favour of the scheme. He rightly predicted the dismissal of eight of the ANZ bank employee's, and that the bank will fight to the death if they are challenged in court to disgorge the illegally acquired funds. When spruiking the offer, what old Herbie fails to tell every one is that the share valuation \$6.89 at time of seizure probably cost him .20c per share, so recovering 35% of \$6.89 = \$2.41, so he is hardly disadvantaged. Certainly not to the extent of the creditors who had paid market price. Although a sporting legend, one could hardly call Herbie an unsophisticated investor.

Well, Herbie is spot on .The death will most assuredly be mine and possibly several others if I am cheated out of my money. I am a proud fellow , possibly one out of every 100k in the population is a fruit loop who is prepared to die in a ditch to make a point , If Mike Smith can ruin my life , then I can ruin his . Possibly then a Royal Commission can take over from the Liquidator and expose the truth in this affair.

Be under no illusion ,there is serious money involved here ,not only are the ANZ fighting to protect their ill gotten gains , but the Liquidator is fighting to keep his liquidation fee of \$10 million ,as are the class action lawyers trying to hold onto their \$11.5 million legal fees and commissions for withdrawing from the class actions

Most persons outside the legal field view class action lawyers as being persons looking to assist hapless creditors in dire circumstances. Well the illusion has been stripped aside in this instance as I now liken them to vultures, who will seek out an animal in distress and feed on the carcass until they are sufficiently engorged.

Whilst they promote themselves, stating they will fund a case, if the going gets tough and the costs mount up, tipping the risk/reward ratio they will abandon the creditors in the interests of their shareholders.

At the risk of sounding bitter and mentally affected (which I am) this whole matter is now about money, and how the ANZ can minimise the amount it has to pay in restitution for the grand theft they have committed.

They have total control of the Liquidator who will do whatever is necessary to get the scheme passed.

This will result in

(1) Assurances that ASIC will not take action against the banks for breach of the corporations act

(2) Minimising the payments to creditors, only repaying the amount seized as unfair preferences

(3) Burying forever the details of how the eight ANZ personnel and Murphy were involved in the downfall of Opes, ensuring that the stain is less visible on the image of the bank

(4) Removing the rights of creditors to sue third parties (brokers/ Advisers), who could in turn sue the ANZ bank.

There are certain groupings, who would want the scheme to go through,

(a) Persons who are absolutely desperate for money, no matter how small the return is.

(b) Promoters, Directors and majority shareholders who have purchased their holdings at par, the value having increased significantly, and even allowing for the return of 35c in the dollar, are still showing significant profits.

(d) Persons who had a positive position as at 27/3/08 but are now showing a negative position.

(e) Persons who will accept the lies and malarkey put out by the Liquidator, and believe he is doing a good job, acting in their interests.

This action has totally disregarded the Opes creditors who had cash balances, had no margin loans, or had minimal loans and were trading in a blameless manner, had lodged securities with Opes Prime on the eve of it going into receivership. This was an unconscionable act in a grab for cash, the bankers moral compass stuck on the cardinal point of theft and greed.

If as Mr. Smith has said, the amount of money involved is quite small, why is he creating such a reservoir of ill will?

Dear Senators it is to be hoped that this scheme of arrangement is voted down and it is seen for what it is, and ASIC will perform the tasks it is charged to perform, the liquidator will be dragooned into using his far reaching powers of examination for the benefit of the Opes creditors, a task he was charged with.

Whilst it is shameful and embarrassing to have to pen this letter, the ANZ banking group must not be allowed to escape unpunished, leaving many with their life savings stolen, some even have taken their own lives, feeling that there is no justice in our commercial environment.

A great number of small creditors are too embarrassed and ashamed to make submissions or take actions as they have mortgages and jobs which may be affected by publicity. Most of the creditors on the class actions run by the class action lawyers are not retail investors but professional promoters and traders, persons who wanted to borrow and short sell stocks.

It is my fervent hope that the committee will view these submissions with the upmost concern and put the strongest censure against all the parties responsible for causing so much unnecessary misery to the small investors.

The last fifteen months have been mental torture for my wife and I, we are unable to plan for the future, indeed we do not know if we have one as a significant portion of the portfolio was to finalise our mortgage.

In conclusion I would add that my entire mental outlook has changed, I worry about this situation every waking moment, it affects my sleep pattern, it is easy to say, don't worry, its only money, you still have your health. Well having had two knee replacements in the last eight months the pain has not tempered my disposition towards the perpetrators of this uncharitable act, A fearsome toll will be required to offset the theft of our retirement funds, no one can expect to commit such an act without retribution.

When the hearing is held in Melbourne I would welcome the opportunity to further this submission, and hope you will subpoena Mr. Smith, his in house counsel and the gardening personnel, as without this information a great number of questions will remain unanswered.

I understand these comments are made under parliamentary privilege, and I do not take this privilege lightly.

I have made these comments based on my own observations of the facts and through reliable legal information from persons involved in the Opes action

Thank you for giving me the opportunity to air my grievances

Yours Faithfully

Robert and Marie Anne Fowler

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