Important! The Troiani Case Against NAB.

Summary:
There are hundreds of NAB related cases and articles you could read which show how you and your family will benefit by supporting the Bank Reform Now protest movement. If you only have time to read one of the cases - please just read the letter shown below. This clearly shows why Bank Reform Now is needed and why - with your support - we will not stop the campaign until the important precedent is set .... and we all win against corrupt banking behaviour.

Article Information**Category:** Banking News
Banking Company: NAB
Bank Malpractice Type: Predatory Lending
Corruption
Powermongering & Greed
Unconscionable Conduct
Other Bad Banking Behaviour
Author: Rita Troiani
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Posted ByPeter Brandson
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NAB Destroys Wide Bay Bricks - Textbook Bank Bastardry

Rita Troiani is the widow of Sante Troiani, once proprietor of Bundaberg-based Wide Bay Bricks. The National Australia Bank defaulted and foreclosed on Wide Bay Bricks. The Troianis were then bankrupted.

The NAB takedown of Wide Bay Bricks would have to constitute one of the most heinous of frauds against a family business in Australian banking history.

This is the letter sent by Rita Troiani to Queensland Chief Justice Paul de Jersey on 3 October 2013. Her husband died penniless after a lifetime of hard work

This clearly shows the bastardry that NAB has been involved in and it shows why we will not use the Courts in our fight for justice. With your help and support we will set our own precedent in our own way.

2l Williams Road
BUNDABERG Q 4570
October 2013

Hon. Paul de Jersey, QC., AC.
Chief Justice,
Supreme Court of Queensland,
415 George Street,
Brisbane Q 4000

Re: Your judgement 21 March 2O01, where Sante TROIANI (my late husband) and myself, Rita Cesarina TROIANI, were the First and Second Defendants and First and Second Respondents respectively, and the NATIONAL AUSTRALIA BANK was the Plaintiff/Applicant, recited as No'SC 7759 of 2000.

Dear Sir,

In the light of recent extensive research on published material, allied with my inspection and examination of Queensland Supreme Court documentation on the public record, my conscience

compels me to write to you.

Having reviewed and assessed all the documentation and information now available to me, I firmly believe that many of your judgements handed down in favour of your personal bankers, the National Australia Bank against my late husband and I, and our company Wide Bay Bricks P/L, was tainted.

On reflection I believe that your judgement in our case, SC7759 of 2000, was a factor which contributed to my husband's premature death. We were denied natural justice in this terrible decision, and in so doing you disrespected your sworn oath taken on your elevation to the position of Chief Justice in February 1998.

From my personal experience, inspection and investigations into material from other, and similar, banking cases convince me that you preside over an administration which permits almost an automatic and contrived process for:

- Summary judgements invariably favouring banks at the expense of defendants, contrary to established judicial protocols, preedent procedures.

- Specific 'case-shopping' by yourself, to ensure that banks appear before 'friendly' judges and, in our case, that where possible you preside over most judgements involving your own personal banker - the NAB.

- Thus there is a denial of natural justice to bank victims by way of access to the benefits of trial, including cross-examination and expert examination of bank evidence and witnesses.

- The denial of defendants' access to critical bank documents through-the discovery process, thereby denying them opportunities for rebuttal of 'doctored' or false evidence and/or figures presented by bank officers.

- The denial of Court transcripts and related documentation, or the belated release of incomplete or 'doctored' transcripts, under pressure, to limit defendants' prospects of successful appeals.

- The denial of evidence, including the questionable 'excusing' of defendant witnesses, to protect the NAB from scrutiny.

I refer you initially to Appendix 1 where personal details and facts in relation to my late husband are outlined.

I would like to refresh your memory with certain facts.

The NAB filed for Summary Judgement against my husband and I pursuant to our Guarantee and Indemnity, alleging that Wide Bay Bricks had breached the bank's security covenants. We denied this and charged the bank with presenting false and misleading figures - and withholding and/or falsifying documentation to present a false picture of a debt which we believe did not exist' This is despite the fact that the bank's instructing solicitors, Mallesons Stephen Jaques, advised our solicitors via letter of 7 February 2001 that discovery of bank documents would be taking place in due course.

We were denied access to vital bank documents which would have been available to us by a proper discovery, and the bank thus withheld information from us with your consent, and the debt as claimed by the NAB was never subjected to expert analysis, scrutiny or any real fiduciary or forensic examination, to verify it. You simply accepted the word of bank officers and their rubbery figures and hastily moved to summary judgement to deny us the benefit of natural justice at trial (as recommended by another judge in another jurisdiction). This gave us no opportunity to effectively test the false testimony of the NAB officers by cross-examination or any other means. So the bank's false 'witnesses' were left unscathed, virtually unchallenged and righteous while Sante and I were (ultimately) consigned to the scrapheap of bankruptcy.

My late husband and I concluded that your actions thus represented a prostitution of due process

and that by denying us access to a trial, which we sought, and which another Judge recommended as being warranted - you deliberately denied us natural justice to favour the interests of your bank.

That decision, Chief Justice, was not merely denial or prostitution of due process - it was meant to and did lead to the eventual bankruptcy of my husband and I.

I now see that there was deception on the part of the NAB right from the outset of the NAB/Boral association. I now know (and so did my late husband at the time of his death) that the NAB/Boral plan was to consign WBB into manufacturing oblivion. It was a scam from the start.

The bank had no difficulty in achieving its conspiratorial aims over an almost six year period when Justice Byrne ratified the appointment of the NAB-nominated Receivers and Managers, Ferrier Hodgson, in September 1999.

From the moment Justice Byrne handed down his decision on 3 September, 1999, Sante and I became well aware that the NAB's aim was to have us bankrupted.

Additionally, from the time Ferrier Hodgson were appointed as receiver managers, they acted and reacted totally for and at the direction of the NAB - not for Wide Bay Bricks for whom they were legally required to act.

Sante and I were refused entry to WBB premises and property. We were not consulted by the receivers on any actions purported to be in the interests of our company. We were also denied access to company documents and information. And we were denied access to tender documents to enable us to enter a bid to buy back (or reclaim) our company. We were refused information on the receiver's write-down of valuations on company assets.

And we were also refused details, until long after the event, on what price was achieved for the sale of assets which included the operating brickworks. We found out later that WBB had been sold for less than 5% of its valuation - i.e. less than $2 million.

But the most cutting aspect of the WBB carve-up, personally, was that a syndicate accepted and recommended by Ferrier Hodgson (acting no doubt, for the NAB and acting in secret) purchased our business for a fraction of its worth. And this syndicate comprised former trusted employees and professional advisers of WBB who we believe assisted the NAB (and, by association, Boral) to bring about our downfall and later financial ruin.

Due to his language difficulties Sante relied heavily on the integrity of his bank manager, his accountant, and other professional advisers such as his solicitor of the day, for sound and honest advice. As events showed they ultimately failed us disastrously and, in some cases, apparently deliberately.

But the NAB/Boral scam could not have worked as effectively as it did without the NAB first syphoning off all of our private assets (valued at over $20 million) by forced sales of property to 'save' our company and to effectively reduce the matured Bill debt, in the No.2 Account No.66-158-5675, which was opened by the NAB on 28 February, 1996. We have never received an accounting from NAB as to the proceeds of sale of our properties as prescribed by s85(2) of the Property Law Act even though we have requested this on many occasions.

Consequently, while we fought against the NAB/Boral attacks on us (and our company) every step of the way, basically we were doomed because we were by this time impoverished. This was not by mere chance, nor by our own misdemeanours, but by the deceit and deception of the NAB and its cohorts.

We believe that when you handed down your judgement in the NAB's favour on 22 March 2001, you knew that we were in an impecunious position. This was confirmed by Justice McPherson's remarks in the Court of Appeal on 7 June 2002 when he stated, "you won't get justice unless you are able to pay for the people who can bring it to you - the barristers and solicitors". (NAB v Troiani, QCA 196, 6 June 2002).

Our experiences with the court system clearly indicated to us that judges, magistrates and lawyers regard unrepresented or poorly represented litigants as easy pickings who are to be arrogantly ignored and/or swept aside. And so we became just another two more such victims.

Your Summary Judgement in favour of your bank, the NAB, gave this thinking substance.

We came to experience at first hand the juggernaut of big money, especially that of the banks, and legal and judicial power, for which we did not possess the necessary resources to mount anything like an effective counter attack. We came to recognise the overwhelming power and influence of the banks on our judicial system and processes and its associated corruption. This also appears to extend to the judiciary over which you preside.

Chief Justice, I have scrutinised in detail our own proceedings and those of other NAB victims in cases over which you have presided, and find that you have failed on most of these occasions to disclose your NAB interests and associations. Further, it is obvious that you have also managed to ensure that you preside over many such cases involving the NAB.

When you presided over our case in March 2001 (after we had been advised that another judge was scheduled to preside) we did not know that the NAB was your personal bankers and you made no attempt to disclose to us that fact at any stage of the proceedings. But, in hindsight, just as concerning to us is the knowledge that our counsel in that action, Anthony J.H. Morris, QC, did have knowledge of that - but failed to enlighten us also. When all these related issues are considered, it reaffirms my view that your decision represents an abuse of process in favouring your personal bankers - the NAB.

Chief Justice, you came to the conclusion in your judgement on our case that we had no defence and adopted the preservation clause of the guarantee, 13.2(f), which provides that the guarantor's obligations are 'not affected' by any "stopping or refusal of any credit, banking facility or other arrangement given to the company whether with or without the guarantor's' consent or knowledge". This is a brutal clause, as anyone with experience in business would testify, and clearly unconscionable.

You acknowledged that the prominent issue in dispute was the Bill Facility with a limit of $7,450,000. This facility should have remained current at all times until 31 December 2003 (i.e, ten years). But you went on to say that you could not find any factual foundation for this contentious issue. Well, you didn't look too hard.

Exhibited material before you incorporated the Byrne judgement of 3 September 1999 wherein Justice Byrne referred to the Bill Facility on no fewer than 19 occasions in separate paragraphs. His Honour included in his judgement that there were triable issues which eventually would have to be adjudicated.

Your decision to give summary judgement against my husband and I became part of a malevolent process by which our company, WBB, would remain out of our control and ownership so the NAB could achieve its apparently carefully crafted plan to get WBB (and us) out of Boral's way. We believe you did not act impartially in this litigation as was your duty but that you clearly sided with your banker.

We were only able to learn of the bank's machinations in this regard when our solicitor of the day introduced my late husband and I to John Salmon, a retired employee with the NAB. Since retirement Mr Salmon has advised small business clients like us involved in litigation against their bank lenders. Mr Salmon is the joint author with Dr Evan Jones of an article entitled Shadow Ledgers and the Default Process in the Australian Banking Sector which is an eye-opener and should be prescribed reading for all judiciary. It portrays graphically the devious processes applied by the NAB and its cohorts which destroyed our business as well as other businesses.

From the abstract of this report the authors described the shadow ledger system used by the NAB:

The shadow ledger system has to be understood as a component of a larger accounting system by which the banks engineer default and foreclosure of borrowers following the establishment of the borrower as 'non-accrual'. The larger accounting system has proved a successful means by which unconscionable and fraudulent practices have been facilitated as legitimate practices in the face of presumed failing customers.

In our case, relevant features of this secret process include:

(a) By maturing the Accommodation Bill for $3.45 million confirms subsequent NAB documentation that in February 1996, or thereabouts, the NAB had classified that Bill Facility as 'non-accrual'.

(b) The 'non-accrual' classification was not advised to us until we were notified via a Mallesons Stephen Jaques letter, dated 13 December 2004, some eight years later.

(c) The non-accrual confirmation also applied to the leasing facility for the Mori Kiln with an established limit at $8.4 million.

(d) The outstanding Accommodation Bill for $3.45 million on 29 February 1996 and $4 million on 28 March l996 were debited to an account described by the bank as a No. 2 account No. 66 158-5675. 2 I am advised by Mr Salmon that the correct description for this account in the circumstances should have been 'Matured Bills Account' and for 'Past Due Bills Account'.

(e) From this period with the changed account, the bank issued no formal bank statements in the standard established form right through to August 1999, when we were issued with Formal Demand on 4 August 1999 demanding $6,274,936.40.

(f) During this whole period, the banks records reveal that it described the No 2 Account indebtedness variously as: Overdraft in Reduction Account; Fully Drawn Advance Account; and Bills.

(g) All WBB Financial Statements for the years ending 30 June 1996, 1997,1998 record the No 2 Account indebtedness as 'NAB Bills'.

(h) Thus not only did the bank intentionally orchestrate a state of confusion, but bank employees were engaged in a conspiracy with WBBs external audit staff.

(i) Formal Bank statements (for value) for the No 2 Account No 66 158-5675 by our solicitors were exhibited to a Court File in March 2001. Sante Troiani's Affidavit records indebtedness as at 4 August 1999 - on the same day - (viz: $3,160,673.76). There is a substantial discrepancy here when compared with the Formal Demand at $6,278,936.40 which specifically applies to Account No 66-158-5675. This latter figure was transposed from the shadow ledger record (not for value, in other words a notional amount).

(j) The contents of Mr Waters' affidavit for the bank, sworn on 2 March 2001 and filed the same day (comprising some 24O/25O pages of documentation) contains considerable misinformation which should have been subject to challenge; of course it wasn't because there was no opportunity for the defendants to do so.

(k) Clause 29 of the Waters Affidavit confirms, pursuant to the bank solicitor's letter dated 11 June 1999, that the Bill Facility was cancelled by the bank in February 1996 and converted to a Fully Drawn Advance.

(l) Not only is the Defendants' filed documentation clear that at all times, viz: from February 1996 to 4 August 1999 (date of the bank's Formal Demand), the Bill Facility at $7.45 million was current and available at all times. This position is also confirmed by the bank's own filed documentation.

When precedent and post summary judgement decisions (described below) are taken into

consideration, anyone who becomes familiar with this case history will come to only one conclusion, and that is that you, Chief Justice, had (or were party to) a hidden agenda which was to protect the NAB, your personal bankers. Your decision appears predetermined. Your actions in ignoring everything we put before you, or tried to put before you, and in choosing to go straight to Summary Judgement, ignoring another Judge's recommendations on triable issues, flies in the face of normal judicial protocol and practices, from which many learned views can be quoted.

Consider the following typical examples:

- Ref: National Australia Bank v Voloshin (2000) NSWSC85:

Clause 7: 'the power to order summary judgement must be exercised with exceptional caution and should never be exercised unless it is clear that there is no real question to be tried'.

- The decision above is reiterated in Webster and Anor v Lampard (1993) 117 CLR598

(2) NAB Bank Statements (for value marked Pages l & 2 and issued on 26 March 1996 and 29 March 1996 respectively. Recorded with the computer notation thereon "DO NOT POST REFER MANAGER"

- ln Jessup v Lawyers Private Mortgages & Ors (2006), Chesterman, your fellow bench cohort, records in his judgement, "Nothing in the UCPR, however, detracts from the well-established general principle that issues raised in proceedings will be determined summarily only in the clearest of cases."

As you would know, Chief Justice, many judicial authorities of national and international repute go much further than this and advocate judgement by trial in all but the rarest and/or most simple of such cases - which is exactly the opposite of your approach in all the cases (involving the NAB) that I have examined.

Consequently, any fair minded lay observer cognisant of these summary judgement determinations could reasonably conclude that your decision, in our case specifically, was arrived at by a process involving judicial bias. Your decision certainly guaranteed that my late husband and I would never ascertain the truth, because you denied us discovery of the most vital bank documents we sought.

From our experience it is clear, we say, that summary judgements should not be given in all bank litigation except in the clearest of cases and almost all bank litigation disputes should be tested at trial.

Your behaviour in our case was made worse by the fact that at no time did you see fit to disclose your personal NAB relationship. When our solicitor of the day became aware that a judge in Federal Court Magistrates jurisdiction continued to preside over one of our bankruptry hearings after he informed us that he was a customer of the NAB, he wrote to us, letter dated 29 September 2004, to inform us: "that FM Driver should have disqualified himself from hearing the applications after admitting he was a customer of the NAB."

Your judicial behaviour leaves little room for doubt that your decisions handed down in favour of your personal bankers are indeed tainted by your failure to disclose your relationship with your bankers to the litigants'.

Documentation (from official records) reveal that you have presided over the following cases and I say that the judgements are probably tainted or questionable:

(i) The Doneley Family litigations (4): No1881 (NAB plaintiff) of l992, No2285 of 1995 (NAB third defendant -twice) and No7367 (Doneley Trust Notice of Motion where the hearing is between the Trustee and the NAB) of 1998.

(ii) Lynton Noel Charles Freeman: No4013 of 1998 (NAB Plaintiff)

(iii) Anita Brigita Bernstrom: No52 of 2001 (NAB applicant/defendant)

(iv) Alan William McMinn and Wilma Helen McMinn: No5530 of 2O01 (NAB plaintiff/applicant)

(v) Graham Arnold Prance Thomas: No237 of 1996 (NAB First defendant)

(vi) David Lewis Clout and Lachlan Stuart Mclntosh: No401 of 2O01 (NAB Fourth defendant)

(vii) Clanford Pty Ltd: QSC 361 of 2OO2 (NAB plaintiff/applicant)

(viii) Introduction to this letter S & RC Troiani. No. SC 7759 of 2OO0 (NAB plaintiff/applicant)

You have directly/indirectly presided over 11 such Supreme Court litigation hearings etc of various dimensions, where, at the end of the day, your personal bankers, NAB, always come out a winner

The questions to ask are:

(i) "Is the integrity of our Courts placed in jeopardy by these judgements"; and

(ii) "Why is behaviour such as you exhibited in our case allowed to continue?"

These questions cry out for a full and thorough investigation.

Chief Justice, it would be appreciated if you would answer the following questions.

(a) How have you so arranged to preside over all 11 hearings (as above) involving your Personal bankers?

(b) Have you countermanded the decision of subordinate employee/s to ensure that you preside over litigation involving the NAB?

(c) Why did you preside over our case? In January/February 2001, my late husband and I were informed by our instructing solicitors, Suthers and Co, that the previously listed Supreme Court judge was to be replaced by yourself?

(d) Why is it that the transcripts of Court hearings for summary judgements and other interlocutory proceedings do not become available, or have been tampered with in some way, where the NAB is a party to the proceedings?

I await your reply within 14 days.

Yours sincerely,

Rita C Troiani
3rd October 2013

This is Appendix 1 - which was attached to the letter above.

Sante Troiani - Details of personal business achievements

My late husband, Sante, migrated to Australia in 1956. Sante left Italy to seek a better life in the 'lucky country'. At that time he had a poor command and understanding of English and this was a burden he carried for most of his life, especially on complicated financial or legal matters.

He was ambitious, hardworking and he laboured long hours. As a result he was soon able to purchase a small farm (with some help) growing pineapples, sugarcane, tobacco, fruit and vegetables. By 1974 Sante was the proud owner of 28 properties all of which were unencumbered.

One of these properties was a small brickworks manufacturing business (Burnett Bricks) situated on seven acres of land in Bundaberg. There were two employees and the owner. On a visit to his parents in Italy he made contact with brick manufactures in both Italy and Germany and on his return Sante established Wide Bay Brickworks Pty Ltd (WBB), where he developed a wide range of bricks which incorporated patent registrations.

WBB borrowed $650,000.00 from the ANZ Bank. And, as an example of his generous nature which became his hallmark in the Bundaberg community over following years, Sante gave a percentage interest in WBB to his brother Luigi, the Third Defendant.

Two years later (1976) WBB was re-sited in Enterprise Street, Bundaberg and the company grew rapidly due to Sante's hard work and acumen, his integrity and the reliability and integrity of his bankers, the ANZ.

By 1993 WBB was the second largest private brick manufacturer in Australia. It commanded a staff of 135, achieved a net profit after tax, of almost one million dollars derived from sales exceeding 14 million dollars. WBB also exported products to many Pacific Rim countries and meanwhile Sante had registered patents of more than 40 clay brick products.

When Sante and I were the majority shareholders in 1993 with 62.5% of the issued capital of WBB the NAB's local Branch Manager, Pat Freney, initiated an association with WBB. Pat Freney contacted Sante six times (without an appointment) over a five week period. Freney induced Sante to enter into the Business Awards Program sponsored by the NAB and Sante duly won the Queensland Award and subsequently won a national award.

From that moment onwards Pat Freney accelerated his 'cold calling' program which culminated in Sante agreeing to transfer all WBB's banking business to the NAB. This agreement was subject to one condition on Sante's part: the condition was that the NAB did not have any significant association with Boral Limited.

Sante had good reason for stipulating this condition. For a decade prior to 1993 WBB had recurring problems with the quality of gas supplied by Boral, a rival brick manufacturer. Boral also had made several overtures to buy out WBB, but we continued to reject their approaches. Boral's chagrin was obvious, a Joint Boral/NAB exercise to torpedo WBB, and us.

Pat Freney's response to Sante was, "Sante, I can assure you that there is no association whatsoever". With that assurance the transfer of WBB's banking business was formalised in November 1993. Freney's assurances that there was no NAB/Boral association at executive level proved to be a deliberate lie.

Just over a year or so later the NAB and Boral then had three common directors, including Bruce Watson, Chairman of Boral Gas. Another director was the former NAB Managing Director, Nobby Clark.

And unbeknown to Sante (at the time) a senior executive of NAB, Don Argus, was represented and introduced to him on two occasions in the late 1980s, when the gas quality was the subject of discussion, as "a Senior executive of Boral". Argus was later to become the Managing Director of NAB.

> Everything changed when the NAB entered the scene. The changes began and ended in deceit and treachery.

Since Sante and I were declared bankrupt some 11 years ago, and following Sante's premature death, I now have to augment my age pension by growing and selling flowers and by grading avocados in season. Both tasks involve hard physical work. I am now a destroyed and elderly widow whose personal and family fortunes and prospects have

been shattered permanently.

Your decision in SC 7759 rendered us to a state of penury from which I have never recovered. We believe that when you handed down your judgement in the NAB's favour, you knew that we would be reduced to this position as Sante tried so unsuccessfully to highlight our plight to you.

I hold you personally responsible for these circumstances.

22.11.05 - Chris Foley, Independent Member for Maryborough, delivers a speech to the Queensland Parliament on the Troiani/Wide Bay Bricks affair (the Bundaberg-based business was in Foley's electorate). Foley claims:

The sad and sorry saga of the Troianis' treatment by the NAB, as set out in a submission from the Troianis and which I table here today with supporting appendices, is a tale of alleged treachery, deceit, unconscionable banking and business practices, and the unscrupulous manipulation and abuse by the NAB of our legal and justice processes aimed deliberately, it is claimed, at deceiving the courts and destroying the Troianis. They have all but succeeded.

File Attachments:

Attachment	Size
Salmon Letter re: de Jersey	654.18 KB
Shadow Ledger - Troiani Excerpt - Salmon / Jones	237.49 KB
Illusion And Reality At NAB - Troiani Excerpt - Jones	212.35 KB

Websites For More Information: Rita Troiani - signed letter to Chief Justice Paul de Jersey
http://bankvictims.com.au/images/stories/pdfs/TroianitodeJersey31013.pdf

Source URL (modified on 17 Mar 2019 - 1:47pm):
https://www.bankreformnow.com.au/node/141