



12 May 2019
Our Reference: Y 0215a

Ms Kate Carnell AO
Ombudsman
Australian Small Business and Family Enterprise
GPO Box 1791
CANBERRA CITY ACT 2601

Kate.carnell@asbfeo.gov.au

Dear Kate

I refer to our recent discussion and correspondence relating to your "Independent Review" of my case against CBA.

You already have significant correspondence between me, CBA and ASIC, together with some of the relevant supporting evidence. I think you also have my more comprehensive evidence file from your original review. If not, I will provide same.

Given the scale and complexity of my case and emergence of critical evidence over time, I thought it might be helpful to briefly summarise what this case is, or at least, should be about, and provide a "road map" to the central claims which I am making against CBA. This follows the collation of my latest thoughts, and more particularly, the relevant new evidence.

My 6 central claims against CBA can be summarized as follows:

1. Following its takeover of Bankwest in December 2008, CBA effectively "froze" all time-crucial decisions for some 6 months relating to all our critical initiatives to protect the project's already established value. This included delaying provision of rollover residual (reduced) loan facility, hindering settlements with Mallesons of pre-sales to reduce our debt (\$100m+), not launching available resort operations and crucial cash flows (\$10m pa), not launching the Middle East Investment Fund (worth \$200m). **THE INEXPLICABLE DELAY BY CBA OF "FREEZING" ALL TIME-CRUCIAL DECISIONS AT THE PROJECT'S MOST CRITICAL TIME, I.E., AT COMPLETION AND PEAK DEBT EXPOSURE IS COMMERCIALY ILLOGICAL, UNWORKABLE, DESTRUCTIVE AND, AS SUCH, UNCONSCIONABLE. NO ONE CAN WORK EFFECTIVELY IN A VACUUM.**
2. During this imposed 6 month "Freeze" we, and other third-party project participants, were continually promised by CBA/Bankwest that the rollover extension facility funds release was imminent, and we were instructed to formally engage consultants and incur costs consistent with these promises/representations. We were instructed, in writing, by CBA/Bankwest to incur more debt and engage consultants, at substantial fees, to continue the resort launch consistent with the agreed rollover facility extension programme. In some circumstances, bank directors actually signed the appointment documents for these consultants and paid the required monies. **AS CBA FAILED TO PROVIDE THE PROMISED ROLLOVER FUNDS, WE HAD BEEN DELIBERATELY AND PROFOUNDLY MISLEAD. A CLEAR CASE OF DECEPTIVE AND MISLEADING CONDUCT.**
3. We now know during this same 6 month "Freeze" period, CBA had formulated and was simultaneously pursuing a \$47m impairment claim against Bankwest owner/vendor HBOS/Lloyds for the sole purpose of reducing the price paid for Bankwest. Had CBA provided the promised rollover facility extension when required in December 2008, the project's success would have continued with "all funds returned to the bank". Under these circumstances, no claim would have been plausible, nor possible. To give any veracity or credibility to CBA's claim, the project's sound financial status needed to be undermined. This was achieved by the deliberately imposed 6-month delay. In short, if the funds had been released, when required, the project would have remained stable and no such claim could have been made. **IT IS THEREFORE APPARENT THAT CBA**



WAS BADLY CONFLICTED DURING THIS PERIOD AS IT PURSUED ITS OWN AGENDA AHEAD OF THE BEST INTERESTS OF ME, THEIR CUSTOMER.

4. It is clear from any balanced, professional, analysis of the financial condition of the project at completion (December 2008), that the project's fundamentals were sound, if not robust, when CBA took over. In the formal judgement of both KPMG and Ernst & Young the project was poised to "return all funds to the bank". The only way that this stable condition could be undermined or even questioned was through CBA's deliberately imposed 6-month "freeze" referred to above. This is what they tried to do, however CBA's cynical, baseless and deliberately engineered claim failed completely i.e. not one-dollar discount off the Bankwest price was awarded by the independent arbiters Ernst & Young, as the project finances were indeed always actually sound.
ACCORDINGLY, THIS CLAIM, AND MORE SPECIFICALLY, THE ENGINEERED NATURE OF IT VIA DELIBERATE DELAYING TACTICS ETC, REPRESENT AN ATTEMPTED FRAUD AGAINST HBOS/LLOYDS
5. On any interpretation of CBA's actions as outlined above, it is clear that CBA's treatment of me, as a customer, was totally outside the requirements of Section 912 A (1) (a) of the Corporations Act 2001. ***CBA BREACHED THE CORPORATIONS ACT BY NOT ACTING "EFFICIENTLY, HONESTLY AND FAIRLY" IN THEIR DEALINGS WITH ME AS THEIR CUSTOMER.***
6. Given the above, it is clear that CBA deliberately engineered the demise of my loan in order to pursue its \$47m claim against HBOS for a further discount on the Bankwest purchase price. It is crucial to appreciate that as CBA had purchased Bankwest so cheaply, i.e., at a significant discount to its book value, CBA hadn't really paid for the inherited Bankwest commercial loans or at least got them at a very heavy discount. In addition, CBA's existing commercial loan book was already full and diverse (particularly in relation to capital backing and Basel considerations) so CBA didn't really want, or need, the already heavily discounted and inherited Bankwest commercial loans and could therefore deal with them outside the normal well-established banking protocols. In short, CBA was in the unique position where they could afford and were incentivized to get rid of them. The associated "book losses" on these unwanted and already heavily discounted loans were claimed by CBA as a "tax loss" improving CBA's bottom line net profit and associated executive bonuses. ***CBA CLAIMED SOME \$825M IN ILLIGIMATE AND DELIBERATELY ENGINEERED "LOSSES" AGAINST 1,958 INHERITED BANKWEST COMMERCIAL LOANS THEREBY DEFRAUDING THE AUSTRALIAN TAX OFFICE OF HUNDREDS OF MILLIONS OF DOLLARS. (CIRCA \$250M – SEE ATTACHED CALCULATIONS AND SUMMARY.***

In respect of the above 6 points, and point 4 in particular (attempted fraud), I claim that CBA's actions were in fact "deliberate" i.e., fraudulent for the following reasons:

1. CBA inexplicably refused to engage with me on any basis whatsoever, post takeover, despite the fact that:
 - a. I owed them \$175m against a project valued over a quarter of a billion dollars which represented 12%+ of the \$2.1 billion Bankwest purchase price (my loan itself being over 8%). It was certainly well and truly on senior management's "radar", yet they would not talk to me, nor meet with me, nor inspect the completed project. This is extraordinary.
 - b. They were fully aware and fully informed, at all times, of the sensitivity, critically and urgency of the situation and very serious risks and downside ramifications if they did not act immediately. They cannot claim "ignorance" nor misinformation, yet they still did nothing.
 - c. It is implausible, if not impossible, to believe that CBA was not fully informed and/or they somehow overlooked the significance of my loan and did not understand the crucial timing considerations and likely devastating ramifications, including the urgency needed to settle sales, rollover residual debt, launch the other vital initiatives viz., resort operations and Middle East Investment Fund etc to maintain and protect the project's hard earned and established value and stability. After all, the project's established value was in fact their loan security.

- d. In any event, they were repeatedly and pointedly advised, and warned in writing, and in the strongest of terms, on multiple occasions throughout late 2008 and early 2009 of the extremely negative outcome of their actions or rather their deliberate "inaction" yet they again did nothing.
 - e. It is equally impossible to believe that senior bankers within the group were simply negligent given the scale and prominence of the loan and the value of the asset/security. If it was negligence, it represents unprecedented gross incompetence and negligence which would be highly unlikely, if not impossible, within the senior ranks of a bank of CBA's stature.
2. A senior bank insider has actually advised me that "The decision was to take no decision".
 3. Both KPMG and Ernst & Young, in their formal capacity as independent experts, agreed that CBA should have provided the agreed facility extension and embraced our entire strategy as this would have seen "all funds returned to the bank and a profit to the developer" in the normal course of business. Accordingly, CBA's price reduction claim against HBOS/Lloyds was rejected in its entirety i.e., not a single dollar of discount awarded against the Bankwest purchase price. In other words, CBA was operating entirely out of step with all established conventional banking protocols and wisdom. In fact, Bankwest had fully supported and recommended our position to credit but were over-ruled and thwarted by CBA. What does this tell us?

When you combine these findings from unimpeachable, independent, experts with our own plan, and the advice of other experts viz., Dransfield Hotels and Resorts and Ron Cooper (St George Bank), it begs the question Why did CBA do what it did?

Perhaps this is no longer the issue as it is established beyond doubt. Suffice to say "they did it" so if they were not negligent or misinformed, which from the above appears almost certainly to be the case, then by extrapolation their conduct towards me must have been deliberate and if it was deliberate, it can only have been designed by CBA for CBA's own benefit, (they most certainly would not do it to their own detriment) but rather to my (the customer's) detriment. This is fraud.

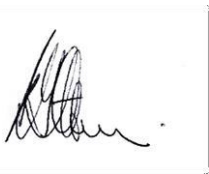
Kate, these are the six accusations and cornerstones of my case against CBA. As you know, my claims are backed by comprehensive and damning evidence in solid support of my summary above. I have copious details to share with the review and look forward to submitting my case, my evidence and indeed myself to thorough examination and analysis.

Of course, I have not listed the extremely serious negative ramifications of CBA's actions on me personally as a business man relying on the principals of commercially fair and reasonable treatment and the protection which should be afforded by the responsible Government agencies, nor on the devastating impact on a crucial inbound tourism town in regional Australia, which should have been protected from this predatory conduct by Australia's biggest bank. That's all fodder for another day.

I trust that the above provides some focus and practical assistance for your staff to detect the central issues and following the copious evidence trail. However, please do not hesitate to call on me for further details and/or explanations and amplification if needed.

With many thanks for your interest and support.

Yours sincerely,



Rory F O'Brien