

PROJECT DESCRIPTION AND INITIAL BANKWEST INVOLVEMENT:

1. Rory O'Brien was a highly qualified, experienced and successful Sydney based property developer and consultant.
2. Whisper Bay is a luxury 5-star strata titled resort/hotel consisting of 104 x 3 bedroom luxury apartments, villas and penthouses, located at Airlie Beach in Queensland. The entire project was conceived and developed by Rory O'Brien.
3. Bankwest enthusiastically participated in the project and provided circa \$180m funding for the entire development (land and construction) in early 2007.
4. The project construction was commenced in February 2007 and delivered by Rory O'Brien '*On Time and Budget*' on 28 November 2008. (Certificate of Practical Completion issued on that date.)
5. The project was formally valued for Bankwest by Savills at \$255m in mid-2008 (against a Peak Debt of \$180m delivering a minimum net profit of \$75m to Rory O'Brien). Please note pre-sales values supported an indicative 'on completion' valuation of circa \$350m.
6. ***At completion in late November 2008 the physical and financial fundamentals of the Whisper Bay project were excellent. The project was in a totally sound and stable condition. The 'status' at completion was as follows:***
 - ***Delivered on time and budget with formal Certificate of PC issued by independent certifier***
 - ***Builder (Hutchinsons) fully paid out and project hand over completed***
 - ***\$106m in pre-sales with 10% deposits in Mallesons Trust a/c ready to settle to dramatically reduce debt (\$180m down to \$75m).***
 - ***Signed agreement with 5 Star Essque Hotels of Dubai to manage resort (worth \$10m pa income growing to \$20m pa to Rory O'Brien)***
 - ***Established Middle East Investment Fund ready to provide full take-out of any residual debt/stock***
 - ***Whisper Bay voted in Top 10 luxury resorts in the world***
7. Given the sound and 'stable' condition of the project as described in Point 6 above, Bankwest and ourselves were naturally anxious to:
 - Settle the pre-sales (\$106m) to reduce debt from \$180m down to \$75m
 - Provide roll over loan for the remaining residual debt of \$75m to allow for pre-sales settlements and establishment of resort cash flow of \$10m pa

- Proceed with the lucrative Essque Management Agreement and provide the associated funding
 - Launch the Middle East Investment Fund to take out residual debt/stock
8. ***The commercial imperatives/actions, described in Point 7 above, are well established industry SOP for all responsible banks and lenders and represent the most obvious, sound and risk adverse approach to protect the already established value of the project and the interests of both the bank AND the borrower. To do anything else would be unheard of and tantamount to ‘Financial Suicide’. (See Ron Cooper affidavit.)***

For these compellingly logical reasons we readily believed Bankwest’s repeated representations and promises to ourselves, and indeed associated third parties, that they fully intended to embrace the action plan described in Point 7 above. I also believe that the senior Bankwest executives who made the representations also sincerely believed them to be true at the time i.e. prior to CBA exerting its improper influence as new owners of Bankwest.

At this point we were totally convinced that we, and our project, were on very safe ground with Bankwest. The working relationship with Bankwest throughout the development process had been excellent. The project was an unqualified success.

IMPACT OF CBA’s INVOLVEMENT IN LATE 2008 AND EARLY 2009:

1. Whilst we were not informed and in fact were kept totally in the dark at the time, (i.e. late 2008) we now know:
 - CBA was in discussions to buy Bankwest in early to mid-2008 (during construction of Whisper Bay)
 - CBA did in fact purchase Bankwest in October 2008 (approx. 1 month before completion of Whisper Bay)
 - CBA settled the purchase of Bankwest on 19 December 2008 (approx. 3 weeks after completion of Whisper Bay)
 - CBA could reduce the price it paid for Bankwest by the value of any loans which were ‘impaired’ as at 19 December 2008 (Clawback or Price Adjustment Mechanism in the contract.)

We were never notified nor advised in any way by neither Bankwest nor CBA that our loan was impaired as at 19th December 2008, in fact to the contrary.

Given Points 6 and 7 above and the repeated representations and indeed actions of Bankwest at the time, we utterly believed we were very sound and stable and proceeding towards rollover in the normal manner.

Given the obvious commercial imperatives and Bankwest's promises and associated actions, we could not even imagine any other agenda. We were wrong.

2. Our original loan was due to expire in mid-December 2008 but was extended to 15 January 2009 to get past the Christmas shut-down period. Given we had over \$100m in sales to settle and a very lucrative Management Agreement with Essque Hotels and Resorts of Dubai to activate, we were extremely anxious to complete the loan roll-over with Bankwest and to crystallize and protect our imbedded profits and take the project forward post completion in late 2008 and particularly in January 2009. Unfortunately by this time CBA was in charge and pulling the strings behind the scenes in pursuit of their own unholy agenda.
3. ***Immediately following CBA's takeover in December 2008 Bankwest inexplicably and uncharacteristically began stalling time-critical decisions and delaying vital payments to consultants and would not confirm nor provide the urgently needed roll-over loan funds.*** During this most critical period for the project i.e. immediately post completion from November 2008 onwards Bankwest (now owned by CBA) deliberately delayed and prevaricated and ultimately failed to:
 - Provide the promised rollover loan funds to allow the project to proceed forward to settlement etc being its natural (and successful) conclusion
 - Provide urgently needed instructions to Mallesons preventing/delaying settlements and frustrating our debt reduction/stabilization programme
 - Pay vital consultants and other project creditors needed to stabilize and progress the project and establish resort income
 - Provide the promised funding for the Essque Management Agreement which they had previously formally agreed to in writing
 - Launch the Middle East Investment Fund to provide full take out of any remaining stock/debt also previously agreed to.

This 'strategy' of interminable indecision and inaction by a major bank owed \$180m against a completed project worth over \$250m at THE most crucial time for the project deliberately imposed upon a diligent developer for some 6 months (November 2008 to April 2009) is and of itself patently uncommercial and in fact unconscionable if not unlawful with possible criminal intent (fraudulent). Alternately it is simply the most negligent act by any bank ever witnessed...a theory highly unlikely to apply to the Commonwealth Bank of Australia.

By April 2009 some 6 months after completion we still had no rollover nor the urgently needed funding promised by Bankwest (CBA) and despite continued promises made as late as February and March 2009 (i.e. well after the January 15 loan expiry). CBA had deliberately held us in 'no-man's land' for nearly 6 months. Project creditors had by then increased to \$1.8m (a mere 1% of our \$180m facility) so CBA then demanded full

repayment of our loan of \$180m in 24 hours. As we obviously could not meet this ridiculous demand, we were put into receivership by CBA in April 2009.

We now know CBA deliberately instigated a 'freeze' policy upon us so as to bleed us out financially and destabilize the project and destroy its value and us in the process thereby ensuring its demise. This is what is known as an 'Engineered Default' deliberately inflicted upon us by CBA so that it could pursue its own agenda/advantage under the 'clawback' in the Bankwest purchase agreement. See below.

WHY DID CBA DELIBERATELY DESTROY THE VIABLE WHISPER BAY PROJECT?

1. At completion of the Whisper Bay project in late 2008 CBA had just paid \$2.1 billion for Bankwest and had to supply an additional \$17 billion in wholesale funding making a total investment of some \$19.1 billion. The deal was completed in a very short time frame and CBA had done only limited Due Diligence.
2. In the process CBA had inherited a large commercial loan book from Bankwest. This produced several unique conundrums for CBA:
 - CBA already had a very large commercial loan book with extensive coverage in all areas they wanted. Put simply they did not really need nor want the Bankwest commercial loan book and had effectively not paid for it in the first place. Basically they got it for free.
 - Because CBA had bought Bankwest so cheaply (about one third of its real value) they could afford to ruthlessly 'rationalize' the Bankwest loan book by terminating unwanted commercial loans with extreme prejudice....which they did. It was important for CBA to write these loans off and destroy the (inherited) customers' ability to fight by bankrupting them. It was vital for CBA to destroy any opposition.
 - In the emerging GFC environment and difficult market conditions it was simply easier, cheaper, quicker, more efficient and indeed more profitable for CBA to terminate unwanted loans rather than 'work with the customers' through much more costly and time consuming workout scenarios. The veracity of this ruthless strategy adopted by CBA was further enhanced/vindicated for the following reasons:
 - i. CBA was on track for record profits and would get tax deductions for commercial loan losses (loans they effectively hadn't paid for in the first instance).
 - ii. CBA would have had to provide more costly manpower and management for these loans which could be much better deployed elsewhere.
 - iii. CBA would have had to allocate much more capital reserves against these loans under the new Basel 2 requirements. (See Anderson Affidavit).

- iv. CBA had the unique benefit of a price reduction ‘clawback’ mechanism under the Bankwest contract whereby they could make an effective ‘Insurance Claim’ against Bankwest’s vendor HBOS (The British Government) for impaired loans at the time of takeover i.e. exactly the same time when Whisper Bay was delivered.
- v. Point iv above provided an otherwise unavailable ‘safety net’ unique to this transaction which provided CBA with another dimension/tool to exploit for loan recovery rather than traditional ‘workout’ strategy.
- vi. The sheer scale and size of the newly amalgamated loan portfolios drove a ruthless rationalization by CBA which otherwise would not occur.

Given the Whisper Bay loan was circa \$180m it represented almost 10% of the \$2.1 billion purchase price of Bankwest. The roll-over required was circa \$75m with associated demanding capital reserve requirements etc upon CBA. The temptation to terminate and ‘clawback’ this loan was simply irresistible for CBA.

Unfortunately however as described in Points 6 and 7 above the project sat complete and in very good sound financial order so the only way CBA could gain a ‘clawback’ price reduction benefit was to ‘engineer’ a default scenario which they did by not providing the urgently needed roll-over funding, legal instructions, payment of creditors etc for 6 months until they had bled us out completely and destroyed the project. The length of time it took for CBA to achieve the financial destabilization it needed to ‘engineer’ a default is testimony to just how robust the project was in the first place; Death by a thousand cuts. Nonetheless they couldn't fool the experts, KPMG and Ernst and Young. (See below)

RECEIVERSHIP AND WHAT HAPPENED NEXT.

1. In April 2009 CBA appointed receivers Korda Mentha to the Whisper Bay project and my companies.
2. Korda Mentha:
 - Failed to settle a single pre-sale of the \$106m available and already under contract.
 - Failed to launch the Essque Management operation worth \$10m pa + income already contracted.
 - Failed to launch the Middle East Investment Fund to provide full take out of remaining stock/debt already registered and ready to launch.
3. Korda Mentha simply placed a “For Sale” add in the Press describing Whisper Bay as "the finest example of a luxury resort on Australia’s East Coast " which was indeed an accurate description and begs the question: why was it in receivership in the first place?

4. Korda Mentha sold the entire Whisper Bay project for just \$57m in mid-2010 being:

- Approx. 50% of its actual pre-sales of \$106m
- Approx. 30% of its actual cost to develop of \$180m
- Approx. 20% of its actual valuation of \$255m
- Approx. 16% of its quoted value to the Middle East Fund of \$350m

5. Korda Mentha's fee for this 'work' exceeded \$2.1 million. Korda Mentha has a **VERY** close working relationship with CBA.

Korda Mentha as agents for the CBA and indeed CBA themselves, have a professional and legal obligation to "mitigate their losses" under such a scenario. ('Engineered' though it was.) This clearly did not happen for the reasons explained above. ***CBA was seeking the demise of the Whisper Bay project with maximum losses so as to maximize the 'clawback' from HBOS (owned by the British Government and being a much more attractive proposition than a longer and more costly workout with the developer).***

As the project was viable and stable by any measure the actions of CBA and Korda Mentha in deliberately destroying its value so as to gain a substantial financial benefit by making what can be characterized as a false 'insurance' claim against Bankwest's vendor HBOS, are in fact fraudulent and criminal.

The false and indeed engineered nature of CBA's fraudulent 'clawback' claim against HBOS was quickly detected as such. Accordingly HBOS rejected the claim outright in what has been described in the Press as "very terse" discussions. HBOS's appointed advisers under the sale deed KPMG also rejected CBA's claim outright.

As CBA still pursued the claim it had to be settled by the independent arbitrator under the sale deed, Ernst and Young. Ernst and Young duly determined that while a (false) technical 'impairment' (basically expiry of facility, outstanding creditors etc) had been successfully 'engineered' by CBA's delay tactics the fundamentally stable status of the project as described in Point 6 above and the logical workout strategy described in Point 7 above were in fact correct and totally sound and CBA would have made NO LOSS and accordingly no provision nor price reduction was neither justified nor allowed.

Tragically for me, my family, my business and employees and indeed my professional reputation, CBA had by this time already totally destroyed my otherwise viable and highly profitable project and all my finances and indeed my career in their ruthless pursuit of a large, but false/fraudulent, claim against HBOS to gain a benefit for themselves. Not what could be described as "***we like to work with our customers***". (Refer "*The Australian Bankers' Problematic Code*", Archer Field, BEc, MBA, Submission 61 – Attachment 1 to The Impairment of customer loans inquiry.)

In short CBA destroyed my family, my career and indeed my life in the greedy pursuit of their own agenda. It is critical to understand the very basic commercial influences. If there was no 'cheap' takeover of Bankwest, nor the potential for a 'clawback' price reduction benefit in the first place, (safety net insurance claim) then CBA would have crawled over broken glass to support the Whisper Bay project and myself in order to protect the/its asset value and loan.

The unique circumstances of the Bankwest takeover provided the opportunity for Mr Narev to pursue another agenda altogether never before adopted by any bank. According to CBA "Banks just don't do this kind of thing". The obtuseness of this statement and their previous actions are the very logic they cleverly hide behind.

CBA TAKES LEGAL ACTION AGAINST RORY O'BRIEN:

1. Having already destroyed the asset value of Whisper Bay almost completely, and subsequently failing in their fraudulent attempt to claim millions against HBOS, CBA then instituted legal action against me by issuing proceedings in January 2011 for \$122m shortfall which they themselves had engineered!
2. These proceedings lasted some 3 and a half years and are well documented both formally and in the press. Obviously the details cannot be chronicled here other than the following brief summary:
 - In January 2011 I was contacted by David Greenburg of Ashursts (CBA lawyers). He stated he had been told to 'go hard' against me.
 - I wrote a comprehensive letter to him pointing out many of the points made above and advising I had no assets left to meet any claim.
 - I offered a mutual 'walk away' settlement but this was rejected.
 - I entered a cross claim for all my losses as a result of CBA's actions amounting to \$512m.
 - CBA relied on "Suspension Clauses" to shut me down from even contesting the case, i.e. you have to repay them before you can litigate.
 - CBA's intention was to Bankrupt me to prevent the airing of the details.
 - I lost the case before Justice McDougall (a former barrister who acted for the CBA).
 - I appealed this loss and had the decision unanimously overturned by 3 senior Supreme Court judges and effectively changed the law.
 - Costs were awarded in my favour by the Supreme Court against CBA.
 - CBA steadfastly refused to pay these costs even with a Court Order. This necessitated sending the Sheriff of NSW to collect.

- CBA lied to the Sheriff stating that it was a Bankwest matter and no property belonged to Bankwest at CBA's office.
- Justice Sakar then heard the matter and heavily criticized CBA and forced them to pay.
- In early 2014 CBA had again bled me out of all funds and I could not raise the \$500,000 needed to continue the case.
- Under the circumstances I had no choice other than very reluctantly enter settlement discussions with CBA
- I attended CBA's office on 29 April 2014 to negotiate with Mr Cohen. At that meeting Cohen confirmed that CBA had tried to 'clawback' my loan.
- I very reluctantly agreed to a relatively paltry settlement of \$1.8m against my claim of over \$500m. At that stage I had nothing left, mentally nor financially.
- CBA reneged on this offer and settled for only \$100,000 paid towards my legal fees.
- As part of the settlement CBA forced me to sign a Press Release denouncing the veracity of my own claims. I had no choice.

As CBA had already bled me out completely and destroyed my project, assets and career in 2009, then sued me when their 'clawback' attempt against HBOS failed, it was necessary for them to go after me hard in the Courts so that this matter would be quashed forever and kept out of the public eye. This was despite the fact that I had no assets left let alone energy to fight.

Through the generous support of my lawyer as well as friends and family I was at least able to put up a reasonable defence, but the sheer weight of money, power and time available to CBA ultimately meant I had no choice other than to settle in the most unfair and totally unsatisfactory terms with a massive gun at my head.

RORY O'BRIEN APPEARS BEFORE THE PJC INQUIRY.

1. In August 2015 Rory O'Brien made a comprehensive submission to the PJC and appeared before that Committee on 13 November 2015. The original submission and appearance before the Committee are recorded in Hansard and publicly on YouTube.
2. On 1 December 2015 CBA formally responded to the Committee in respect of my submission, testimony and associated accusations referred to above.
3. *The formal CBA written response to the Committee in relation to my testimony, amongst other things, formally and categorically confirms that:*

- ***CBA did attempt to gain a ‘clawback’ price reduction benefit for my loan against HBOS of some \$47 million.***
- ***This attempted ‘clawback’ was rejected by HBOS, their representatives KPMG and ultimately by the independent arbiter Ernst and Young***
- ***According to Ernst and Young the claim was rejected as my strategy already in place would have seen all funds returned to the Bank through the normal course of business. It should be noted that my sound strategy and indeed the overall soundness of the Whisper Bay project itself at its completion in late 2008 was recognized and supported by :***
 - ***Me, as an experienced professional property developer and owner of the development.***
 - ***Independent and highly regarded Hotel Resort consultant (Dransfield) who was also an adviser to Bankwest.***
 - ***Independent property consultant Matusik Property Insights (strongly supportive of the valuation).***
 - ***Independent Banking Expert Ron Cooper (formerly senior executive St George Bank).***
 - ***Bankwest senior property executives.***
 - ***Essque Hotels and Resorts (owned by the Dubai Royal Family)***
 - ***Bankwest Head office and owners HBOS***
 - ***KPMG as HBOS advisers***
 - ***Ernst and Young in their formal capacity as independent arbiters under the Sale Deed between CBA and HBOS.***

The unanimous agreement between all these diverse and respected professionals as to the soundness of my project highlights the cynicism of the CBA fraudulent actions, associated engineered default and false claim against HBOS.

4. It is important to note that CBA had previously vehemently denied any ‘clawback’ benefits, activities, incentives and associated *engineered default* actions etc on at least 15 separate and documented occasions before previous Senate Inquiries and hearings as well as in the PJC itself. This multiple misleading of the Senate and other Government Inquiries is an extremely serious matter for CBA.

SUMMARY:

It has now been established beyond any doubt through Court action, forensic investigation, evidence of victims, several Government Inquiries, the sheer elapse of time and indeed by written (CBA) admission that after CBA took over Bankwest in December 2008:

- CBA reversed our sound agreement/strategy with Bankwest to provide rollover of our loan.
- CBA engineered a default by freezing critical bank decisions for 6 months from November 2008 to April 2009.
- CBA failed to provide the promised funds to ourselves and Essque to take the project forward and realize the embedded substantial profits.
- CBA deliberately destroyed project value so as to maximize losses and 'clawback' benefits.
- CBA falsely put the project into receivership when it was in fact stable and sound.
- CBA and Korda Mentha failed to make any attempt to mitigate losses. In fact they colluded to 'engineer' as much loss as possible.
- CBA made a fraudulent claim against HBOS for \$47m.
- CBA was denied this claim by HBOS, KPMG and Ernst and Young as being totally unjustified.
- CBA has lied to the Senate on at least 15 occasions in relation to the 'clawback'.

Quite obviously CBA was massively conflicted during this period which explains their deliberate, uncommercial and unwarranted delays in rolling over the urgently needed residual debt. This deliberately, self-serving and destructive conduct by CBA was unconscionable

THE NET RESULT OF ALL THIS IS THAT CBA HAS DESTROYED MY LIFE AND THE LIVES OF MANY OTHERS WITHOUT JUSTIFICATION AND IS STILL GETTING AWAY WITH IT. SOMETHING MUST BE DONE.



Rory F O'Brien