

CBA lied to NSW sheriff over BankWest loan: customer

By [Sarah Danckert](#)

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The Commonwealth Bank lied to the New South Wales sheriff to avoid paying a \$40,000 legal bill awarded by a Supreme Court judge to a former client on BankWest who had his loan foreclosed in a manner that was found unfair by the court, a parliamentary committee has heard.

The explosive allegation against the bank was made by property developer Rory O'Brien who had his BankWest loan foreclosed shortly after the Commonwealth Bank acquired the second tier lender from UK bank HBOS in October 2008.



Property developer Rory O'Brien says the Commonwealth Bank lied to the NSW Sheriff to prevent to the confiscation of property to pay off court costs. MICHELE MOSSOP

Mr O'Brien also said CBA chief counsel David Cohen admitted to him the only reason the bank foreclosed on the loan was so it could utilise a clause in the deal between CBA and HBOS that allowed CBA to claim the full face value of a loan in BankWest if it had foreclosed on it.

A submission to a joint parliamentary committee into the treatment of consumer loans released on the eve of Friday's hearing alleges CBA tore up 1000 loans to BankWest customers to extract over \$2 billion from HBOS under "claw back" provisions in the aquisition deal.

The parliamentary committee also heard from BankWest victim Romesh Wijeyeratne, who said documents showed Mr Cohen had admitted the bank had foreclosed on a the 1000 loans to utilised the claw back provisions in CBA's acquisition of BankWest from HBOS.

"The bank denied this claw back clause. We now know the claw back exists," said Mr Wijeyeratne, saying Mr Cohen had deceived the Senate in his explanation of the claw back provision.

He said the bank foreclosed on the BankWest loans because it was having difficulty meeting its Basel II capital safeguard requirements after the acquisition of BankWest.

'Assassinated'

Mr O'Brien, who was speaking under parliamentary privilege because he is subject to a gag order as part of a \$100,000 settlement with the bank, said the CBA foreclosed on his BankWest loan despite the fact that his \$250 million-plus resort project in the Whitsundays was successful and had over \$150 million in pre-sales to the luxury property development.

"It didn't fall apart, it was assassinated... I was dead man walking the day they [CBA] took it [BankWest] over" he said, adding the bank had engaged in unconscionable conduct.

In 2013, the NSW Court of Appeal found Mr O'Brien's loan had been foreclosed on unfairly and awarded him \$40,000 in legal costs. After months the CBA had still not coughed up the costs and Mr O'Brien and his lawyers at King & Wood Mallesons were forced to call in the NSW Sheriff to CBA's head office in Martin Place to seize property equivalent to the value of the costs order.

Mr O'Brien said the executive assistant to CBA chief executive Ian Narev told the sheriff assets in the builder were CBA's and there were no BankWest assets that could be seized.

"The sherriff was hoodwinked into believing it was a BankWest problem... This is standard operating procedure by CBA and it is financial bullying."

Responding to Mr O'Brien's allegations, Senator Deb O'Neill said: "That's incredible that someone could lie to the sherriff."

She added it joined with other evidence of a cultural problem at the CBA that "is at the heart of the problem".

"They're crooks," Mr O'Brien said.

He said his project had the support of the Dubai Royal Family and Prince Andrew while his \$170 million-plus loan was in the hands of BankWest, but when it came to rolling over the loan in early 2009 CBA balked at the refinance and appointed receivers to Mr O'Brien's development.

"Why didn't they roll over the loan? To do anything else is financial suicide. Why would CBA do something so odd? Quite simply they were either totally inept or had another agenda."



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