

28 August 2017

Russell Cousins
Director, Bank Victims Pty Ltd
101/10 Albert Avenue
Broadbeach QLD 4218
via Email: office@bankvictims.com.au

Dear Mr Cousins,

Thank you for the opportunity to review your detailed assessment of the loan contract between the Australian and New Zealand Banking Group Limited ('ANZ') and Mr [REDACTED] and Mrs [REDACTED] ([REDACTED]).

This review is not a full assessment of the issues on foot between the parties and should not be presented as professional legal advice. My opinion, as requested, is based upon my familiarity with the [REDACTED] case, similar cases and my work generally as a professional advocate managing Banking and Finance related disputes.

In your letter received 22 August 2017 you asked for my opinion on four key issues raised as part of your assessment into the [REDACTED]'s case with ANZ. My response to these key issues are as follows;

Did the Bank act professionally and properly when it asked the [REDACTED]s to sign the loan contract?

There is no evidence to indicate ANZ acted professionally and or properly when it asked the [REDACTED]s to sign the loan contract.

On the contrary ANZ staff failed to note red flags including errors and inconsistencies indicating possible fraud and mistaken identity. Highly concerning was the ANZ's failure to correctly identify Mr [REDACTED], which may constitute a potential breach of its requirements under Part 2 ("Identification Procedures") of the Anti-Money Laundering and Counter-Terrorism Financing Act (2006).

ANZ failed to provide appropriately trained staff (as required under the Code of Banking Practice) at the Branch attended by the [REDACTED]s. This led to the [REDACTED]s not being correctly identified and non-compliance with required disclosure (right to legal advice, time to review the contract, evidence of disadvantage).

Failure to deliver expected levels of professionalism and due diligence clearly facilitated the [REDACTED]s entering a wholly inappropriate contract furthering hardship.

It may be worth noting that as part of a deal with the Australian Securities and Investment Commission ('ASIC') ANZ committed to redressing customers affected by poor lending practices as recently as April 2017. ANZ's failure to provide appropriate restitution to the [REDACTED]s appears to constitute a breach of this agreement with ASIC.

Did the Bank take into account the [REDACTED]'s cognitive, physical and financial circumstances prior to and when the [REDACTED]s signed the contract?

ANZ failed to take into account the personal circumstances of the [REDACTED]s that would clearly establish their special disadvantage (disabilities) prior to and in entering the contract.

Poor systems by design and or fault enabled ANZ branch staff to ignore and or fail to identify the [REDACTED]'s cognitive, physical and financial circumstances that would deem the loan contract inappropriate or fraudulent. This in turn gave rise to the [REDACTED]s being placed in a position of special disadvantage prior to and at the time of entering the loan contract.

Had ANZ staff been appropriately trained they would have ensured the following;

- a) Customer provided with an appropriately private setting in which to review the contract agreement with a qualified loans officer;
- b) Information on the Application submitted by the Broker to be verified by the customer;
- c) Identification to be completed and checked against the Application;
- d) Basic enquiries of the customer that may indicate disability or disadvantage;
- e) Disclosure of the right to legal advice;
- f) Disclosure of the right to review the contract and return at a later date.

Under Part B of the Banking Code of Practice (2004) 'Key Commitments and General Obligations' ANZ subscribes it has standards of practice and service in place to protect customers with disabilities. Given the nature and complexity of loan contracts the ANZ appears to have undertaken its responsibilities in an perfunctory manner in breach of its contractual agreement with the [REDACTED]s.

In view of information provided to us by the Bank, did it comply with the principles of fairness when it was evident the [REDACTED]s could not repay the loan?

ANZ is contractually bound to act fairly and reasonably in a consistent and ethical manner towards the [REDACTED]s (provision 2: Code of Banking Practice 2004). In determining fairness ANZ subscribes that it will consider customer conduct, its own conduct and the contract.

Available information demonstrates ANZ has not provided equal consideration to the conduct of the parties in determining fairness. For instance ANZ has not considered the lack of parity between the parties, nor the [REDACTED]s cognitive, physical and cultural vulnerabilities in entering the contract. The ANZ has not appropriately weighted its own systems failures in originally determining the [REDACTED]s capacity to repay nor its failure to verify information and identify errors.

Once it became evident the [REDACTED]s could not repay the loan, ANZ failed to act fairly by;

- a) Pursuing the debt through default notices causing stress and anxiety;
- b) Failing to disclose in a timely and transparent manner errors in the establishment of the loan;
- c) Failing to provide an acceptable resolution in a timely manner so as to avert continual subjection to stress and anxiety over the default (given their health risks); and
- d) Continuing to place undue pressure on the [REDACTED]s to sell their home in order to satisfy the contract in full.

In determining the [REDACTED]'s capacity to repay (with knowledge of errors made in the course of establishing the contract) ANZ (letter dated 29 July 2016) demonstrate a continued willingness not to adhere to the principles of fairness by acknowledging the [REDACTED]s inability to repay the loan and suggesting the sale of the family home as the only available option.

On the issue of agency and given the brevity of ANZ's failures it would also be unfair of the Bank to utilise agency (Broker as agent of the customer) as a means to avoid or diminish its responsibility in relation to the contract.

If the family were forced to sell the home to meet their obligations under the ANZ contract this would complete a cycle of 'loan churning' representing a case of classic 'asset stripping'. Such conduct is neither fair or just.

Do you think the lending to the [REDACTED]s is predatory?

ANZ's decision to lend to the [REDACTED]s fits within the accepted definition of predatory lending.

Predatory lending encompasses a catalogue of lending practices usually targeted towards vulnerable people with or without assets. The [REDACTED]s had the foresight to use compensation funds following a workplace accident to purchase a home for the family. The home was not an investment but provided security (shelter) for the family. The [REDACTED]s conduct in relation to the family home was fitting of a borrower not enticed by short term profits. Nor was it evident that a business was run or would be run out of the property in the future.

The true financial position of the [REDACTED]s leading up to, during and following the ANZ contract showed an inability to meet ongoing repayments without continued and substantial financial hardship.

There is nothing in the documentation that suggests the [REDACTED]s were willing to risk their home for financial advantage. Such evidence may include funding purposes such as improvements for sale or development. Conversely the ANZ (and Broker) demonstrated a reckless willingness to impose that risk (loss of home) on the [REDACTED]s.

As such the lending satisfies all elements reminiscent of predatory lending including;

- 1) The borrower(s) being vulnerable (physically, cognitively and culturally); and
- 2) The borrower(s) access to property equity; and
- 3) The borrower(s) low income and lack of any foreseeable changes to the low income (disability);
and
- 4) The use of an agent (broker); and
- 5) The use of an inappropriate loan product (low doc loan).

The type of predatory lending I believe the [REDACTED]'s loan falls within is 'pure asset lending'. Therefore in my opinion ANZ's acceptance of the [REDACTED]'s home as security and taking its mortgage over the family home to secure its loan constitutes unconscionable conduct:

(a) under the general law;

(ii) in contravention of Ss 12 CB and CC of the ASIC Act.

Disclosure of Potential for Conflict of Interest

In your assessment you cite the Unhappy Banking Group at paragraphs 60 (page 10) and 62 (page 10). As such I disclose a potential conflict of interest due to previously holding the position of Senior Case Manager with Unhappy Banking between December 2013 to April 2015. My affiliation with the Unhappy Banking Group has since ceased and I work independently of any association under NMK Solutions Pty Ltd.

Please do not hesitate to contact me should you have further questions or to discuss the points raised above in further detail.

Kind Regards



Natasha Keys

Director

NMK Solutions Pty Ltd

Mobile: [REDACTED]

Email: [REDACTED]