



23 January 2017

Westpac Customer Relations
Reply Paid 5265
Westpac Group
SYDNEY NSW 2001

Dear Sir/Madam,

RE: JMA PARTIES V ST GEORGE BANK

Bank Victims has been asked to review the JMA Parties allegations that are set out in their letter to the Westpac Bank on 1 November 2016.

We are advised that the bank failed to confirm receipt of their letter, thereby failing to answer the allegations set out in the letter, which suggests the bank failed to comply with clause 35.3 of its small business contract.

The letter stated:

"In 2006, a group consisting of 25 people (the JMA Parties) suffered damages when the St George Bank (the bank) transferred Jenolan Caves House lease (the lease) to the NSW Government without offering it for sale.¹

Background

In 1996, Jenolan Caves Resort Pty Ltd (the company) entered into a loan agreement with the bank. The company had purchased a 99 years lease located in the Jenolan Caves Reserve Trust (the Trust) land area and required additional funding to restore the 100 years old hotel.

In 2004, the bank required the company to enter into a new loan contract bound by the 2004 Code. The documents the bank provided to the company's director (the director) noted there were three parts to the contract: facility offer, general standard terms and the code. The documents were attached to a submission

¹ 6 June 2006, email from Paul Billingham to Archer and Celia Field Re: JMA Matters.

published by the Parliamentary Inquiry into Banking Competition 2011.² The bank required that the director, Mr Archer Field, guarantee the loan.

A copy of the Australian Bankers' Problematic Code paper was also included in the submission. Later, a copy of the paper was hand delivered to Mr Lindsay Maxsted, Chairman, Westpac Banking Corporation on 16 April 2013 by the JMA Parties in order to allow the bank to reconsider practices of its chief executives since 2004. It identified problematic practices by subscribing banks between 2004 and 2010.

In the Executive Summary, the paper suggests:³

“that the Senate or the Federal Treasurer commissions an inquiry into the issues raised herein. The inquiry would have intent to implementing legislation that would add a truly independent element to the governance and principles involving banks' behaviour in dealings with customers. If the review finds that the banks used the constitution or other practices to their customers' disadvantage, the review might recommend corrective action”.

In October 2005, the company was in breach of its contract and the bank required it to repay the loan. However, in 2005 there was public information confirming there was no Trust Board and that amendments to the National Parks and Wildlife Act (1974) (the Act) would take effect on 1 July 2006. As a result, the lease could not be sold or refinanced until then.

St George Bank's Loan Contract

In August 2005, the bank appointed Grant Thornton to carry out a report into the company. It notes in page 11 that the company had to “obtain a commitment from Government that the Trust will [need to] meet its obligations set out in 1989 Plan of Management and the Services Agreement. Key issues are water filtration, replacing aged pipes and infrastructure ...”

Later in 2005, the bank appointed Grant Thornton as Receivers and Managers (the receivers and managers). They took possession of the lease and quarantined all of the company's records and documents. The receivers and managers were mindful of the water failures, brown water, lack of filtration and problems that were damaging the viability of the company and businesses.⁴

During the following six months, the receivers and managers prohibited the director and his wife from entering the hotel. This meant that furnishings and art, loaned to the company by the director's mother could not be reclaimed. This continued for the next eight years. There was other correspondence seeking to

² Parliamentary Inquiry into Banking Competition 2011 Submission 109, Attachment 2&4, accessed at http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Completed%20inquiries/2010-13/bankingcomp2010/submissions.

³ Ibid, Attachment 3, page 5.

⁴ 23 August 2005, Grant Thornton 'Investigating Accountant's Report into Jenolan Caves Resort Pty Limited', pages 11.

resolve the dispute between the company and the bank, which were dismissed by the bank.

On 16 June 2006, the director wrote to Mr John Thame, Chair, St George Bank, stating that "during the past year, I have been involved in several matters that have not been resolved and as stated in recent correspondence to [the bank's Chief Executive] Ms Kelly ... I am therefore writing to you to achieve the same end"⁵.

The St George Bank made the following commitments to its Code of Conduct:

Clause 1.1 states the code "sets standards of good banking practice to follow when it is dealing with customers and their guarantors".

Clause 2.2 states the bank will "act responsibly towards customers in a consistent and ethical manner and consider key commitments with regard to its prudential obligations".

Clause 13.1 states the bank "will provide customers information concerning the bank's complaint handling procedures".

Clause 25.2 states the bank "will try to help customers to overcome financial difficulties with any credit facility it has with the bank".

Clause 35.1 states the bank has "an internal process for handling disputes, it is free and it meets Australian Standard AS4269 or any guideline that ASIC declares applies and that it adheres to the timeframe set out in the bank's code".⁶

Prior to June 2006, the bank had failed to comply with the code. On 20 June 2006, the director wrote to the Australian Bankers Association (ABA)⁷ including documents noting that the bank was in breach of the code.

On 23 June 2006, Mr Thame wrote to the director stating he read the memorandum and referred it to the bank's General Counsel, Mr Michael Bowan⁸. On 26 June, the General Counsel replied stating that he did not "propose to respond to each of the allegations made by [the director] but reserve the right to do so at a later time..."⁹.

In July 2012, 25 people that suffered damages at Jenolan Caves, who believed that the bank had a duty to comply with the code, and met with the ABA. At the meeting they sought a copy of the Constitution that sits under the CCMC. Prior to this lawyers acting for the director were not willing to argue the breaches of the code in the court.

⁵ 16 June 2006, Memorandum from Field to Mr John Thame, Chair, St George Bank, page 1.

⁶ Ibid, page 5-6.

⁷ 20 June 2006, email from Archer and Celia Field to Australian Bankers Association Re: St George Bank handling of Jenolan Caves Resort Loan prior to 9 December 2005.

⁸ 23 June 2006, letter from John Thame, Chairman, St George Bank, to Mr Archer Field.

⁹ 26 June 2006, Michael Bowan, General Counsel and Secretary, St George, to Mr Archer Field.

On 27 July, when the ABA provided the JMA Parties with the Constitution¹⁰, it explained how banks could, at their discretion, transfer any code breach or complaint to a court, thereby denying justice to under-resourced customers.

Having written to the Chairman of Westpac, and now having obtained a copy of the constitution, the JMA Parties filed a submission with the Scrutiny of Financial Advice on 10 December 2014¹¹. It detailed practices banks used to dismiss their contractual duties under the code, using the constitution to obtain a financial advantage.

On 21 August 2015, the JMA Parties filed a two-part submission with the Impairment of Bank Customer Loans¹². The first part deals with each of the terms of references. The second part (attached) is relevant to this paper. It explains how the St George Bank transferred its customer's property, valued by it at \$11.3 million, to the NSW Government for \$1.3 million without offering it for sale.

The submission alleges that:

“the lessee’s bank has engaged in deceptive and potentially fraudulent behaviour. It claims to protect its customers’ rights while participating in a regulatory regime that denies individuals and small businesses any avenue of redress for alleged breaches of consumer protections”.

Conclusion

Up until the JMA Parties obtained a copy of the CCMC’s Constitution in 2012, their lawyers, without supporting evidence, would not allege the banks statements were untruthful or misleading. In 2012, the JMA Parties again claimed the bank should investigate its own conduct before any further action is taken.

The JMA Parties believe that statements made by the bank’s Chief Executive... to the House of Representatives Standing Committee on Economics on 6 October 2016 demonstrate the bank has introduced a new culture.

[The bank’s Chief Executive] stated:

“a banking licence is a privilege, and with that privilege comes a responsibility to earn and maintain the trust of our customers and our community by dealing with people fairly and honestly. In recent years it is clear that a trust-gap has opened up, and we as an industry and as individual banks need to work harder to close that gap”.

¹⁰ 27 July 2012, letter from Steven Munchenberg, Chief Executive Officer, ABA, to JMA Parties. Prior to 27 July, the JMA Parties had repeatedly been unable to obtain the copy of the Constitution.

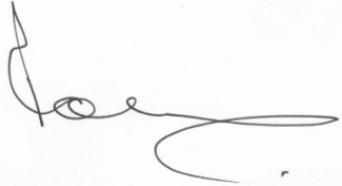
¹¹ 10 December 2014, submission 79, Scrutiny of Financial Advice.

¹² The Impairment of customer loans submission 120 with the Parliamentary Joint Committee on Corporations and Financial Services accessed at http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Corporations_and_Financial_Services/customer_loans/Submissions.

The JMA Parties would like you to refer the statements made in relation to earlier problematic practices by the bank to your internal dispute resolution department, in order that an appropriate investigation is carried out.”

Bank Victims will provide a copy of its review to the relevant parties, which may assist the bank in reviewing the above matter.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Russell Cousins', with a long horizontal flourish extending to the right.

Russell Cousins
Director
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