Banking - a dirtier business is hard to find

Summary:
Have you ever wondered why a bank would default you when you've never missed a payment? Or why the bank would sell your confiscated property for much less than market value? Doesn't make sense to sell it cheap and leave you with a debt that could have been significantly reduced if not paid off in full. Well Natasha Keys spills the beans. From a banker's point of view it all makes perfect sense. It's a very dirty business .... as you will see.

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Why there is no incentive for banks to settle disputes

As an advocate I've heard the expression 'it made no commercial sense for the bank to do what it did to me' more times than I can recall.

In many cases this sentiment is true. Particularly when a borrower could meet varied contract terms yet the bank chooses to sell the asset in a distressed state or during a real estate downturn. This was

the case for thousands of property purchasers in Gladstone Queensland whom were provided large loans above the value of property supported by high rents driven by the short-lived mining boom.

Once all is done and dusted the borrower may uncover evidence of wrongdoing on part of the initial loan process, conduct during the loan itself or the use of depressed valuations significantly under the value of previous bank valuations to sell property at a loss.

More often than not the borrower is left with a significant shortfall.

A bank's decision to pursue a shortfall or take legal action will be entirely dependent on whether you will make for 'fair game'. Determining fair game is not an exact science but at its core resides some unsavoury extrapolations being conducted in secret.

Firstly they determine the impact bankruptcy will have on your career, then how much money your family has **(i.e spouse, parents, siblings),** what businesses you are associated with, **who your friends are** (i.e James Packer, Bill Gates), the health of your parents and number of siblings **(i.e inheritance pool)** and your health **(i.e life insurance).**

If any of the above identifies you as 'fair game' then it's game on. Expect that claim for the shortfall to arrive sooner rather than later. Expect loved ones to promptly remove you from their wills. Alternatively if you have less prospects then the bank may choose to put the shortfall into the 'slow cooker' or hand over to a collections agency to harass you for payment.

In the event that you take the bank on because you have a 'great' case and are in possession of 'damning evidence' then you would be totally within your rights to believe there is a 'commercial sensibility' factor the bank would weigh in considering to settle your claim earlier rather than later.

However commercial sensibility from a bank's perspective resides in a parallel universe. As a borrower you look at your evidence, the claim and can totally see how it makes commercial sense for the bank to settle rather than spend hundreds of thousands if not millions on litigation fighting the indefensible.

But a bank being in a parallel universe speaks a whole new language. This is a language that borrowers don't know exists. Commercial sensibility to a bank means assessing 'risk' according to different variables. None of these variables are connected in any shape of form as to whether the bank is guilty or not guilty of the allegations made against it. These variables just come down to the game of litigation.

What most of us are not aware of is that when a claim is made the bank's insurer is notified immediately. The bank's internal legal counsel will advise the insurer the claims are baseless and that the chances of successfully defeating the claim are significant (as advised by Counsel usually a Barrister of significant name). **Banks will routinely not disclose pertinent information to their insurer because largely they've got away with not doing so in the past.**

Once external lawyers are engaged the bank will then open up a loan account or litigation slush fund based on a quote to defend the claims. Almost invariably, particularly where there is a shortfall, the Bank will counter-claim for that plus costs. This always looks good to the insurer because it legitimises the bank's position. **Even if the bank knows it is guilty of the allegations it will still file a counter-claim to just ensure this legitimacy is protected on the surface for the insurer.**

Part of the bank's commercial sensibility is in fact based on cost. But even then cost is not just a monetary factor. Most importantly **monetary cost for a bank is buffered by their access to the slush fund they set up exclusively to fight you in court.**

The slush fund the bank has approved to fight you will then be insured itself (yes another layer of insurance is initiated) **so if the bank does in fact lose the case the loss will be restricted to the cost of the insurance policy rather than the total slush fund itself.** So say the bank

opens up a loan account to fight your case of $500,000 (adjusting accordingly) then the insurance cost will be around 25% of the total loan.

So if we are talking pure monetary cost as a factor of commercial sensibility then we are not even on the same page. Where a borrower sees the risk as the total legal bill the bank only sees the risk of the lost insurance paid. So we are comparing $500,000 to $125,000 which of course is commercial insensibility.

But it does get worse. All legal firms have agreements in place with the big banks. It is how law firms compete with one another for a larger slice of the litigation pie. Aside from being on retainers they have commercial agreements in place providing bank's themselves with a commercial interest in the fees derived from the work the bank refers to the law firm. So if the fee's are $500,000 it may entitle the bank with a 25% fee credit for future services. **This generates a form of corporate dependency allowing bad bank behavior to prosper under the watchful eye of the legal fraternity. Thus that $125,000 cost comes down to $0. Of course the incentive for the law firm is to drive up the fees.**

They know the slush fund is there so they set a cracking fee pace.

Banks are in the business of leveraging. They leverage your claim, they leverage the law firms against one another and they leverage the legal system against the borrower. They make a buck on every level because every level is an opportunity to be leveraged.

On the non-monetary commercial sensibility side of things this will depend on whether you are represented or unrepresented. As a represented litigant they'll exhaust your available funds and frustrate proceedings. Inevitably you will turn against your lawyer and your lawyer will turn against you. As an unrepresented litigant they will simply exhaust your will, frustrate proceedings and drown you in unfamiliar interlocutory actions and excessive demands while belittling your lack of legal knowledge. The law firm has $500,000 to play with and they know law is the playing field but the game is something entirely different.

In the end the bank will claim its full legal expenses even though it could have settled with you for far less years prior. There is just no incentive for the bank to settle disputes because put simply they are insured to not settle.

So even if your case is strong and you have a chance at winning this will be severely undermined by the uneven playing field you find yourself. You are not only disadvantaged by the bank's resources but their access to products that undermine one of the core functions of the judicial system which is to encourage parties to exercise a commercial judgement based on cost of litigation and risk.

By Natasha Keys

BRN Comments - Take the time to digest this superb expose from Natasha. The calculations used by bankers to work out how to maximise the asset stripping process can only be described as pathological. Can you believe that these bankers - and the lawyers, liquidators and assorted accomplices involved - can sleep at night knowing how they are making a living? Worse still the politicians that are supposed to represent us have for decades allowed this corrupt and evil financial system to rule over all of us.

Does the Hayne Royal Commission want to reveal this element of "bank culture?" There is no doubt Hayne understands all of this very well.

It really is time to try something new. At #OzElection19 BRN will release the simple three point policy prescription many have been waiting for. We cannot continue on this path where the ruling elite are allowed to fleece our people and country.

It's your money, time and stamina that is being stolen. Are you ready to take a united stand to make things right?

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