Predatory lending in Ms. Genner's WBC loan

Background

Ms. Genner retained a house at [redacted] that was part of her divorce settlement in 1990. In 2001, Ms. Genner still owned the house and had accumulated nearly $3 million in debt held the house mortgage. Her earnings at that time were $30,000 per annum, but the house had been valued at $6.2 million in 2006 and rented for three years at $200, 000 per annum.

In March 2008, Ms. Genner refinanced her Australian Securities Ltd (ASL) loan facility with Westpac (WBC) for $4.5 million, secured over her house. The WBC's *interest only* business loan was for a period of 18 months with two different interest rates.

This business loan had two parts. the first part allowed the bank to accumulate the interest so it would be paid by Ms. Genner at the end of the loan period while the second part required her to pay monthly interest. The first part of the loan was provided to Ms. Genner to partially service the interest payments of the second part of the loan.

Given the complexity of loan terms, when Ms. Genner signed WBC's loan, she believed that she only needed to pay *minimum* repayments of $10,000 and per month because the rent her was receiving from renting out her house was sufficient to pay that amount, even though the interest was actually more than $30,000 per month.

In April 2010, WBC increased the limit on the first loan with variable rate and it would expired six months later in October 2010. The variations had a special condition attached requiring Ms. Genner to have a contract of sale for her house by 31 July 2010.

According to forensic accountant's report commissioned by Ms. Genner's solicitor in 2020, Ms. Genner "*could never have afforded to pay during the term of the loan*". The financial loss report concluded, as a consequence, that the damage suffered by Ms. Genner is more than $5.5 million.

Ms. Genner was 15 years old when she left school and was 64 years old when she signed the Westpac loan contract in 2008. At the time of signing the loan contract, Ms. Genner was a shop assistant working in Double Bay with earnings of $400 a week.

What is predatory lending

According to Investopedia, "*Predatory lending typically refers to the imposing of unfair, deceptive, or abusive loan terms on borrowers. In many cases, these loans carry high fees and interest rates, strip the borrower of equity, or place a creditworthy borrower in a lower credit-rated (and more expensive) loan, all to the benefit of the lender.*

Predatory lenders often use aggressive sales tactics and take advantage of borrowers' lack of understanding of financial transactions. Through deceptive or fraudulent actions and a lack of transparency, they entice, induce, and assist a borrower to take out a loan that they will not reasonably be able to pay back."

The key points here are:

- Predatory lending is types of lending practices that involve *unreasonable or unjustifiable loan terms that result in a net financial loss to borrowers*, not lenders, including high-interest rates, high fees, and terms that strip the borrower of equity.
- Predatory lenders often use *aggressive sales tactics, complicated or misleading advertising, and deception* to get borrowers to take out loans they can't afford.
- Predatory loans typically target *vulnerable populations based on race, age, gender and/or in vulnerable situations*. This includes those struggling to meet monthly expenses, people who have recently lost their jobs, and those who are denied access to a wider range of credit options for illegal reasons, such as discrimination based on a lack of education or older age.

Allegations of predatory lending in Ann Genner's case

- At no time before and during the period of the loan could Ms. Genner afford to pay the interest costs. WBC granted Ms. Genner loans without regard to her creditworthiness or ability to pay the interest. First, the bank knew Ms. Genner had not always paid the ASL interest which was at a lower interest rate. Second, Ms. Genner's tax income in 2005 and 2006 was $NIL. Third, in 2006, Ms. Genner generated a net loss of approximately $370,000. She had also suffered tax losses from 2002 to 2004. Based on Ms. Genner's historical credit history, her default risk was high.

According to her financial loss report:

> *"l) Further evidence of Genner's increasing debt position is evidenced by the loan that WBC refinanced, which was provided by Australian Securities Limited ("ASL"). The ASL loan agreement was signed by Genner on 28 November 2006, with a facility limit of $3,780,000, interest rate of 7.95% per annum and for a 3 year term. By the time WBC provided unconditional approval in March 2008, Genner's loan position was circa $4,200,000, which is $420,000 higher than when she took out the ASL loan a little over 2 years prior. Furthermore, less than 3 years later her debt with WBC was $5,302,621.51, at time of Property Settlement, being $1,102,621.51 higher than when she took out the WBC loan. On average, with WBC this equates to annual increases in debt of $367,540.50 per annum compared with, on average, $210,000 per annum with ASL.*
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> *m) WBC issued letter of variation on 28 April 2010 increasing the limit on loan 200861 to $925,000 [first facility], with variable rate of 8.44% per annum and expiring on 14 October 2010. This variation had a special condition stating that Genner had to provide contract for sale of the Property by 31 July 2010, with settlement effected by 14 October 2010."*

Therefore, WBC was aware that Ms. Genner was not able to afford the interest, but still granted Ms. Genner business loans knowing she would likely succumb to default. This demonstrates that WBC behaved in a deceptive manner, and subsequently imposed unreasonable and unjustifiable loan terms that result in a financial loss to Ms. Genner.

- The bank misled Ms. Genner when it offered her *business* loan, which secured by her house, to refinance her ASL home loan. The WBC provided her business loan while she did not have a business. This suggests the WBC funds were pure-asset loan:

  "Asset-based lending is a type of lending where the loan is made exclusively, based on the value of the assets securing the loan, without regard to the ability of the borrower to repay by instalments under the contract. The lender knows that if the borrower defaults there is adequate security to repay the loan".[1]

  Accompanied with the facts of Ms. Genner's lack of education and her advanced age when signing the loan contract, this meant that Ms. Genner's business loan had a high default risk. Therefore, the loan was predatory.

- A review of Westpac documents noted there was no benefit for Ms. Genner to sign the Westpac loans unless the interest rate were significantly lower. As a result of this "loan flipping" — *refinancing loan without benefit the borrower, causing high fees to "strip" the borrower's equity* — with WBC less than 3 years later, Ms. Genner's debt had been accumulated to be approximately $1.1 million.
- The bank sold Ms. Genner an interest-only loan — "*where the borrower pays only the interest for a set period of time, and then begin to pay down the principal in addition to the periodic interest.*" This meant that customers cannot build their equity with interest-only loans because the principal would have to be paid one day. Customers with interest-only loans will end up paying loans have ballooned.

  And this was what happened to Ms. Genner. She was forced into a "fire-sale" of her only asset and had to accept an offer of approximate $5.6 million. After paying her business loan (interests plus principle) of approximate $5.3 million and sales agent fees, and was left with only $160,000. This is very little considering the loan was secured by the house, which had been valued at $7.5 million at time of loan origination in 2008 — an $1.3 million increase of value since 2006.

[1] https://rcrlaw.com.au/unconscientious-exploitation-of-borrowers-special-disadvantage/

- The WBC loan facilities put Genner in an increasing debt position, as she could not service the loans in her own right, and hence WBC provided more debt to service the existing debt. As the loan to value ratio increases, the equity in the property decreases, reducing the likelihood that Ms. Genner would recover some value in the case of default and foreclosure.

  Burdened by her ballooning loan debts, Ms. Genner strained just to keep up with her loan interest payments. Ms. Genner's WBC debt in 2011 was $5.3 million, which was $1.1 million higher than the loan she took out 3 years earlier in 2008.

- WBC provided Genner with the unconditional business loan in March 2008, with 2 facilities (1. $675,000 and 2. $4,2000,000 interest only business loans) offered for a period of 2 years and 6 months, and with the first facility to service the second one. The minimum monthly repayments for the second loan were $10,000.

  Ms. Genner believed that she only needed to make repayments of $10,000 per month, even though interest on second facility would be approximately $30,000 per month.

  WBC fail to excise due diligence to make sure a 64 years old, high school dropout to not only read the relevant loan terms but also understand them as in that she understood the consequences of a default including the loss that she is likely to suffer because of default. Yet, WBC had only considered Ms. Genner's ability to pay the minimum rate, or made Ms. Genner to think only $10,000 to be paid per month, not the actual interest of more than $30,000, not the subsequent higher repayment, when granting the loan.

  To further the complication, 2 facilities were granted by WBC to Ms. Genner with the first one servicing the second one, which was not only challenging for her to comprehend, but also putting her in an increasing debt position.

Conclusion

Had WBC been a prudent and diligent lender and not provided Ms. Genner with purported predatory loans, Genner would have sold the property at the time of WBC loans origination, not lost millions of dollars in equity in the property, not lost over a million dollars in WBC interest and fees, not suffered the indignity of social consequences of having to live in a one-bedroom guest house to continue to work, to make a living when over 70 years old.

Disclaimer

This story has been prepared for and at the request of Ms. Ann Genner. In preparing this story, I have relied on the source information provided to us by Ms. Ann Genner and have believe this information being accurate and complete.

I have also supplemented the source documentation provided with publicly available information, where appropriate.