Submission to the Australian Financial System Inquiry: Australian – New Zealand Arrangements

This submission is on behalf of the Scene 3 Action Group which was formed in November 2013. The group currently consists of 89 Australians, 8 NZ citizens, 4 from Ireland and 8 from the UK. We all purchased apartments in a building (Scene 3) in Auckland NZ – mostly off the plan. We paid deposits between 2003 to 2005, with settlement on 2nd June 2006. There are other similar buildings (Scene 1, Scene 2, Q-Central and Princes Wharf) with additional Australians affected. Overall we estimate that the scheme we have been caught in has affected approximately 400+ Australians.

There are many layers in what appears to be a well-planned and deceptive setup involving a developer, two law firms, valuers and banks in NZ and an investment company in Australia which did most of the marketing and selling via a network of financial advisors.

We have had great difficulty in finding out the real situation – being obstructed at every turn, and finding NZ government agencies inaccessible. This scheme is beyond even the funnelling and lack of professional boundaries that used to operate on the Gold Coast. It has had severely adverse financial effects for those of us involved who are now trapped. We are "mum and dad" investors, not large corporations.

There is a ripple effect for the Australian economy. Many investors were near retirement and have no chance to recover. They face their older years in a much impoverished state. One Australian investor is 78 years old still doing full time night shift, afraid to retire in case the bank in NZ takes her home. Many have had to use their superannuation to get out. Others send every spare cent to NZ to shore up an ever worsening situation: money that obviously does not go into savings, superannuation or into the Australian economy now.

Below is a list of some of the issues:

1. Marketing different to contract – particularly promising unit (strata) title for properties that were lease apartment (something we have never heard of) on leasehold land. There are no individual titles. Bank documents also promise title.
2. The majority of buyers were referred to a respected law firm in NZ who had an undisclosed conflict of interest. Documents were not provided, short notice for settlement date (a couple of weeks), pressure to settle (fines of $160 a day), no explanation of the structure, not meeting fiduciary responsibility (which is higher to foreigners) and then buying the Head Lease and profiting from us settling. Also appeared to be acting for the vendor not us.
3. Ground rent – we expected to pay rent to the landowners, a Maori company. Initial rents set low to entice us in. Reviewed after 5 years and increased between 700 to 900%. Not possible to know this would happen from the initial contract or any advice given previously. Misrepresentation: told we had a rent free holiday for 5 years but in reality there was a prepayment by the developer which was more than recouped in inflated purchase prices.
4. Valuations appear to be inaccurate.
5. Westpac was an initial funder of the development and many of us were funnelled to them for mortgages. They are 66% exposed in our building. No banks seem to have researched

the title structure properly and now are very aggressive in foreclosure, fines and legal action due to finding out that the apartments can be forfeited with no recompense to "owners".

6. Head Lease that was not supplied is an extortionate and unfair contract. This document is also confusing using both the terms owner and sub-lessee for us. We have been advised that it was written to avoid the protections of the unit title act. All costs are paid by us as "tenants" – both costs that a tenant would pay and a landlord would pay.
7. Hidden encumbrances: compulsory appointment of a real estate company owned by the developer to manage the building and exclusive rental management. Even though the swimming pool was listed as an inclusion on our contracts the developer retained ownership and sold it after settlement with an encumbrance ensuring a compulsory liability for owners ($60,000 a year for our building – and it is only 2 lanes and shared with 3 buildings).

Values are now at approximately 30% of purchase price despite a boom in neighbouring properties. Bank loans are now much higher than the property value and most of us do not have the assets or cash to get out, even at a huge loss. These apartments have not recovered from the GFC, they have actually plunged in value due to the lease on lease structure and the huge increase in ground rent which is totally unregulated. Neighbouring buildings, Scene 1 & 2 had to raise $1.25M to go to arbitration just to try to get a fair rental amount. There is a ratchet clause that prevents the ground rent ever going down, despite being presented as tied to bare land value.

The NZ government has so far taken the view that this is a private matter between individuals and they will not consider intervening. We have approached the NZ Law Society re: the law firm. However, the partners in this firm are past presidents of the society. One NZ owner got a payout and now seems to be "cooperating" with this law firm. An Australian owner's complaint was simply dismissed as unfounded. It appeared from the written ruling that source documents were not reviewed.

It has taken years for us to be able to have contact with each other. We have been researching litigation but that is very expensive – and we have been drained of resources (we think deliberately). There appear to be actions by the developer to obstruct us and push past statute of limitations.

Our request

We would like this inquiry to consider:

1. That ties between NZ & AUS are becoming closer – creating a situation where it is easier to take action against Australians from NZ but without the consumer protections that need to accompany this.
2. Despite the stance of the NZ government, this is not a matter between private individuals. It is an issue of providing safeguards for foreign investors in NZ, particularly Australians. (Many NZ citizens have also been affected but the NZ government seems unwilling even to assist their own)
3. The effects of being caught in this scheme for us are devastating. Many of us would love to walk away but we will be pursued and lose our homes or any assets in Australia. Those who are still hanging on somehow are working extra hours just to feed these greedy people.

There is no safe way out and a class action, even if successful, will cost approximately $20,000 each (min) which we don't have. The American system of being able to "hand in the keys" might be worth having for extreme cases such as ours.

4. The structure of lease on lease is not appropriate for individual investors in residential properties. There should be a reciprocal situation where unit/strata title is compulsory.
5. The lease for our building also covers a neighbouring lot that is leased to Woolworths Australia, although we pay 50% more ground rent. This mixing of corporate/commercial property arrangements and individual residential arrangements is disadvantageous to the latter – similar to the issues discussed regarding separation of commercial and investment banking.
6. NZ is seen as safe and similar to AUS. Australians need to be warned that it is not safe to invest in NZ in the current climate.
7. It is very difficult to raise issues with various NZ agencies from Australia. Suggest a government body be set up in both countries to advocate and explain on either end – at no cost to the individual investor.
8. Banks need to take some responsibility for lending money in these situations without doing their research (loan documents promise a certificate of title and some even list the property as freehold). It should not be entirely placed on the individual borrower, especially since there appears to be collusion between the major players in this scheme.

Finally, we would like to point out that Australia and New Zealand have a free trade agreement that may have been breached by NZ not providing appropriate consumer protection. Australia and New Zealand are both Commonwealth countries. One of the aims of the Commonwealth is for member countries to "work together on many important matters, like business, health and the fight against poverty".

We do not believe that the scheme we have been subjected to adds to the fight against poverty. In fact we have been placed in penury as a result. We have been lured into the situation because we falsely believed that New Zealand was a safe country for investment. It is not.

Note: At the public forum in Sydney, Wed 20th August, David Murray indicated that a senior NZ official would be liaising regarding this Inquiry. Mr Murray kindly offered to raise overall systemic financial issues stemming from the relationship between NZ and Australia with this official.

We would be happy to provide any further information as needed.

For your consideration

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