

Ross I. Goodridge

ABN 26 159 743 935

*Denman Chambers
St James Trust Building
7th Floor, 185 Elizabeth St
Sydney NSW 2000
DX 185 Sydney*

Tel: (02) 9264 6899

Fax: (02) 9264 5541

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The Joint Chairmen
Storm Investors
Consumer Action Group
(SICAG)

Dear Joint Chairmen and members,

Thank you for your invitation to me to share some of my experiences and provide my thoughts with you and your members.

Before speaking about money and legal rights, I wish to address the most important issue. The most important issue is to acknowledge the pain, distress and anxiety that many, if not all of your members have felt over what has occurred to them. I am sure some people have suffered and may still be suffering and it would not surprise me if a significant share of your members have turned to alcohol and medication to try to help themselves through.

For myself, I went from being a very cock-sure barrister to a very shattered person. It took me some months to substantially overcome my depression. Thereafter, for a few more months, I would at times slip backwards and become miserable and have dark thoughts. The most therapeutic day in my life was the day I obtained judgment in my favour.

You must not blame yourselves. You acted entirely prudently. You did not make rash decisions. You placed yourselves in the hands of a licensed finance adviser and you acted in accordance with the advice that you were given. You did not do anything wrong.

I have now spoken personally with over 50 of your members who have approached me directly and asked me for assistance. I found each member that I spoke with to be an honest and genuine person who is worn down, confused and tired of being treated as a commodity or ignored. These members have shared with me heart wrenching stories as to the personal affects on their life and have been critical of the process they have been involved in.

The process and agenda appears to have been run for everybody's benefit except for your members. At times, the members have received no information and contact, at other times they have been bombarded with legal documents and a demand that quick decisions be made. Recently, members have received a 20-odd page document from

the Commonwealth Bank (“CBA”) and lengthy legal explanations as to why one case or another may not apply.

Remember, you did not do anything wrong.

In law, the fact that you did not do anything wrong is not itself grounds to win a court case. You need to identify that somebody else did something wrong. If they did then you need to find out whether they have any money or not. There is no point suing a person who is solely responsible for your losses if they are bankrupt.

Relevantly, Storm Financial Limited (“Storm”) has had liquidators appointed and, as I understand matters, there is no prospect of obtaining any damages from Storm.

This leaves 2 possibilities. The first is, can it be shown that a Bank is wholly, partly or jointly responsible for causing your losses or part of your losses, or secondly, can it be shown that a Bank aided or abetted or acted in partnership or cooperation with Storm (or somebody else) to cause all or part of your loss.

It has been reported to me repeatedly that the information coming to members appears as though it is coming from a sausage machine with the handle being cranked by the CBA.

One of the main questions that I have been asked is:

Why is everybody’s claim under the resolution scheme to be determined on the same formula?

As those members correctly point out, that surely some cases are stronger than others and if their case is one of the stronger ones, shouldn’t somebody be on their side and point out to them the strengths of their case. Equally, if their case is a weak case, shouldn’t somebody point that out to them. Members are confused as to whether the offer is in their personal best interests or not.

Another question that has been asked of me is:

Do I agree with the document that has been circulated purporting to explain that my case, that is *Goodridge .v. Macquarie Bank Limited [2010] FCA 67*, should provide no hope or at best, marginal hope for your members?

I ardently disagree with the content and effect of the document circulated. It is wrong. I am **the Goodridge** in *Goodridge .v. Macquarie Bank* so **I** should know!

Yet another question that has been asked of me is:

Will any legal remedy will take 5 years as I have been told and in the meantime could I lose my house?

One of the many pieces of misinformation that has been reported to me is that members have been told that any legal remedy will take 5 years and in the meantime they could lose their house. My case took 8 months start to finish. Normally, the courts would restrain any action to sell any person’s house whilst the parties are in serious legal contest.

A number of members have reported to me that you are being discouraged from seeking a second legal opinion. Why? For my part, I welcome the assistance of any lawyer, I have never been so conceited as to believe that I possess all the knowledge in the world. My simple aim is to assist as many people as I can and if others will help me with this task, they would be more than welcome and I would appreciate any such assistance. This is particularly so given the enormous amount of documentation and information that needs to be processed. To date, I have read approximately 5,000 pages of background dealing between Storm and the Banks, particularly the CBA.

There are any number of facts that any one person may not be aware of including the existence of a letter dated 18 May 2007 in which CBA agree with Storm that,

“In the unlikely event of a margin call (CBA) and Storm Financial will work in partnership to clear the margin call”.

What in fact happened in each of the cases that I have looked at so far was that there was no such communication or co-operation or “partnership” offered by CBA. CBA simply acted on their own to redeem units and sell shares, often without any communication with the client.

Although there will be variations in any one case because of the different circumstances of each person and the different versions of the terms and conditions of the margin loans, some general statements can still be made.

I will make some general observations that apply to both CBA and Macquarie Bank margin loans. There will still, by necessity, be some generality in what I say because each person’s individual circumstances is different and there were a number of versions of each loan agreement, issued at different times in history, by each of the Banks.

When was the Bank entitled to sell your shares or redeem your units?

For the most part, the margin loan was secured by shares in public companies or units in various unlisted Index Funds.

The entitlement to sell occurred when you authorised the sale or, you committed an *event of default*.

An *event of default* occurred when you did not rectify a *margin call* within 6 days of CBA asking you to, or 4 days of Macquarie asking you to.

A *margin call* the Banks have tried to argue occurs automatically. That contention is contrary to case law and the terms and conditions of the margin loan. A *margin call* is a notice given in accordance with the terms and conditions of your loan agreement. The CBA loan agreement for instance does not recognise any notice unless it is in writing, signed by a manager, posted or faxed to you. Macquarie’s methods of notice are more numerous than the CBA’s.

The Banks have argued that they did not need to notify the client of a *margin call* and that somehow customers were “*in margin call*” without receiving a notice. These

arguments do not sit comfortably within the structure of the documents, for example, (using CBA 2008 version Loan Agreement references)

“What must I do if I get a Margin Call Notice” (page 9)

And at page 22,

“Upon receiving a Margin Call, you must ... within 5 working days of us asking you to do so.”

The case law does not recognise silent margin calls. In *Goodridge .v. Macquarie Bank Limited*, Justice Rares at paragraph 81 said,

“... A margin call is not automatic or any sum that is capable of calculation in advance of a Bank actually requiring the borrower to pay the sum specified by it ...”

The Banks were relevantly only entitled to serve a notice if the loan value ratio had been exceeded. I have seen evidence of a considerable number of mistakes by the Banks both in the value of the securities and the sum of money which had been paid off the margin loan or which should have been credited to the margin loan. There are many cases in which the Banks appear to be unaware of linking requests to various cash management trust accounts and accumulation cash accounts.

Breaches

The conduct of the Banks appears to breach:

- Contract Law;
- Sections 12CA and 12CB or 12CC of the *Australian Securities and Investments Commission Act 2001*;
- Section 12ED of the *Australian Securities and Investments Commission Act 2001* and / or the warranty provided by section 74 *Trade Practices Act 1974*;
- Section 52 *Trade Practices Act 1974*;
- Section 51ACA *Trade Practices Act 1974*;
- The tortious obligation to not convert property;
- The obligation in equity to not act unconscionably;
- The obligation to not act in a misleading and deceptive manner; and
- The Banking Code of Practice

Help Available

For my part, I have been providing people with preliminary advices free of charge. I am grateful to the assistance that Mr Stephen Firth’s law firm has provided in this

regard. Mr Firth has been organising the requests and dealing with members and providing me with the various information in an organised fashion to assist me in providing these advices. Mr Firth's firm is also not charging for the assistance in providing the preliminary advices.

Should your members wish any free assistance, then please contact,
Firths – The Compensation Lawyers
Telephone no. (02) 9261-5800
Toll Free no. 1800 631 888
Email address: info@firths.com.au
Web Address: www.firths.com.au
Street Address: The Chambers, Level 6, 370 Pitt Street, Sydney NSW 2000
DX Address: DX 11630 Sydney Downtown.

Should any member specifically need to speak with me then that request may be made also through Firths and I will try to speak to as many people who need my personal assistance.

Alternatively, Mr Stewart Levitt of Levitt Robertson is also working with me to provide people with legal advices and options. As I understand matters, Mr Levitt's firm is charging for this service however, members should make their own enquiries in this regard. Their contact details are:

Levitt Robinson, Solicitors & Attorneys
Level 6, 162 Goulburn Street
SYDNEY (EAST) NSW 2010
Tel: 02 9286 3133
Fax: 02 9283 0005
www.levittrobinson.com

I wish you and all of your members good health and I hope I have, by this letter, been of some assistance.

Yours faithfully

ROSS GOODRIDGE
Denman Chambers
St James Trust Building
7th Floor, 185 Elizabeth St
Sydney NSW 2000