Story Overview
"Who would lend more than $840,000 to a couple, each of whom was on a disability pension with no prospects of any form of employment, with the husband partially blind and the wife with a long-term disability, when each had nothing to offer but the desire to speculate in real estate?" Well actually it was Perpetual Trustees ... once again showing the way predators feed on the weak, vulnerable and sick.

Story Details**Story Of:** Dale & Faith Burns and the predatory lending of Perpetual Trustees
Bank Malpractice Type: Predatory Lending
Unconscionable Conduct
Year Problem Resolved: 2015



Bad Banking Experience - Full Story:

Court win for disabled couple

A disabled Perth couple has won an extraordinary legal battle against a major mortgage lender that was trying to throw them out of their home over loans which went bad during the global financial crisis.

Dale Burns, who is functionally illiterate and blind in one eye, defended himself in WA's Supreme Court against Perpetual Trustees Victoria, claiming decisions to lend him more than $850,000 through a series of "low doc" loans up to the end of 2007 was unconscionable.

If he had lost, he and wife Faith, who is almost blind and intellectually disabled, would have lost their home in Armadale, their only asset.

But in a massive legal turn-up, Mr Burns won his case with all loans issued to him declared invalid with an order to return to the couple more than $220,000 in mortgage payments.

Despite the risk of losing everything, Mr Burns ploughed on with his legal action after first having to be ruled competent with a court-ordered medical assessment.

"Why should you be terrified to appear in front of a judge, it is your legal right," Mr Burns said. "And being disabled should not mean you do not have the rights of others. It is something I wanted to do and having won, I still haven't come down to earth yet."

In a hard-hitting judgment this week, Justice Eric Heenan ruled Mr Burns had "special vulnerabilities" that made him impressionable and easily led and that the various lenders took advantage of his

disabilities when they lent him hundreds of thousands of dollars.

“Who would lend more than $840,000 to a couple, each of whom was on a disability pension with no prospects of any form of employment, with the husband partially blind and the wife with a long-term disability, when each had nothing to offer but the desire to speculate in real estate,” Justice Heenan wrote.

“The answer is that the plaintiff ... when any semblance of precaution or independent advice for the vulnerable borrowers was absent.”

Despite neither of the couple having a job or any prospect of one and a meagre pension their only income, Perpetual Finance Group, through intermediaries, approved “easy doc loans” ranging from $60,000 to $330,000 despite the couple not meeting the loan criteria.

The mortgages were used to buy properties in Gosnells and Armadale with the plan to pay off the loans, which accrued more than $6000 a month in interest, through rental income.

Justice Heenan said the Burns were extremely vulnerable to severe economic reverses and “only too obviously, that is what happened”.

They began defaulting on payments and had to sell various properties but still owed more than $260,000 and Perpetual took legal action to claim their home.

“I am not intimidated easily and I can’t stand injustice and this is what I felt this was,” Mr Burns said.

He is now considering a claim for damages.

Perpetual Trustees Victoria, named as the plaintiff, said it was the lender of record but the loan was held “in a mortgage trust which is not managed or serviced by Perpetual.”

It gave no indication about a possible appeal.

Source: WA News Tim Clarke Saturday, July 04, 2015

BRN Comments - This is our second story highlighting Perpetual Trustees and their unconscionable conduct. We are sad to report that Dale Burns has passed away not so long after showing amazing bravery and skill in his battle against Perpetual Trustees. Tim Clarke's article highlights the company's problem and our series will show you that bad behaviour is systemic. Worse still Geoff Lloyd, the CEO of Perpetual, was recently also appointed to Chair the Financial Services Council - the body overseeing Australia’s $2.6 trillion wealth management industry. How can this be? Very simply because the system is rigged and until we wake up to how it operates and demand change the rip offs will continue.

Perhaps the most powerful commentary surrounding the case of Perpetual Trustees Victoria v Dale and Faith Burns is that of the opening remarks of the Justice EM Heenan:

EM HEENAN J: "Who would lend more than $840,000 to a couple, each of whom was on a disability pension with no prospects of any form of employment, with the husband partially blind and the wife with a long-term disability, when each had nothing to offer but the desire to speculate in real estate?

The answer is that the plaintiff (Perpetual) did lend that money in a series of six loans to the defendants through intermediaries in what are termed 'low doc (documentary) loans' when any semblance of precaution or independent advice for the vulnerable borrowers was absent and where the intermediaries were entities for which the plaintiff disavows any responsibility or relationship of agency. Now that the defendants' investments have proved disastrous, four of the loans have resulted in distressed sales and a balance, insuperable for the defendants, remains outstanding, this action is brought by the plaintiff for recovery of possession of the last property acquired by the

defendants which was offered as security. It is their residence and only significant asset."

It is, we believe, worth noting the following points from BRN friend Boyd Fraser regarding the two Perpetual cases we have featured so far:

a) The similarities in the personal circumstances of Sir Edward "Weary" Dunlop's eldest son, Alexander, and Mr and Mrs Burns are compelling, as is the conduct of the financial intermediaries and that of Perpetual, the later appearing to have no sense whatsoever of what is fair and reasonable and in accord with community expectations. It would not be unreasonable to conclude that the sole focus is upon maximizing profitability, with no measurable heed given to the interests of borrowers.

b) In both cases, and in general terms, the cases illustrate that the very agencies that are charged with protecting the interests of all Australians, and in particular those of vulnerable individuals and families, have failed to do so in other than a tokenistic manner. This remains the case today, notwithstanding growing calls for the bank and non bank financial services sectors to act in a manner that is both ethical and moral, and represents the best interests of the borrower rather than the lender.

c) In both cases, and in general terms, the cases highlight the problems that can readily arise in regard to low-doc loans, as offered to the market by both bank and non bank financial institutions, which neither the Turnbull Government nor the regulatory agencies have an appetite to address in a meaningful manner. This is, in my view, a gross abrogation of the Federal Government's responsibilities to regulate the finance sector in a manner that reflects the best interests of the general community.

d) In both cases, and in general terms, the cases illustrate the readiness of financial institutions to conveniently relieve themselves of any moral or legal considerations via the issue of agency. In regard to Alexander Dunlop and Mr and Mrs Burns, Perpetual argued that they should not be held responsible for the tragic consequence of their low-doc loans. I find this to be morally repugnant!

e) Financial intermediaries are generally deemed to be acting in the interests of borrowers. I would argue that this is a misrepresentation of reality and that financial intermediaries should be seen to be acting in the interests of lenders, except in those instances where they are not receiving payment via commissions but are providing a fee-for-service arrangement.

f) The Australian Bankers Association and the Financial Services Council maintain that further regulation is not necessary to protect the interests of borrowers. I would argue that this position is based overwhelmingly on self-interest and of maintaining profitability and that the extent of irresponsible lending, as per the examples of the Burns and Alexander Dunlop, is profound in both bank and non bank financial institutions.

If you have any information about unconscionable conduct involving Perpetual Trustees please get in touch with us here at Bank Reform Now. We will not rest until victims of finance system crimes and misconduct are fully compensated.

Related Links: Perpetual Trustees Ripped Off Sir Edward "Weary" Dunlop's family
The low-doc loan that brought down a family - Yet another Perpetual scandal

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