NAB Breaches Its Own Contract

Summary:
A Court case study - NAB abuses its position of power charging outlandish and unjustifiable fees, penalties and interest. Court rules against NAB.

Article Information**Category:** Banking News
Banking Company: NAB
Bank Malpractice Type: Powermongering & Greed
Unconscionable Conduct
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Date First Published: 30 Sep 2010

Posted ByPeter Brandson
6 Apr 2014 - 4:20pm





Kay v NAB [2010] NSW Supreme Court 1116

The loan agreement had a fixed interest of 5.65% and a default rate of 4%. The loan provided for an automatic roll over after the first year on similar terms. The **NAB breached the agreement in a false and deceptive manner,** by charging the base rate of 5.85% and 13.15% on default.

When the borrowers protested, the bank sent a duplicitous letter claiming the borrowers acknowledged in a meeting that “the default interest rate was being charged in terms of contractual

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arrangements". The court found that there was no such acknowledgement given at the meeting. The letter seems to have been an aggressive bluff as the judge noted:

Although the contract documents emanated from NAB, it did not have on the borrower's file a copy of the original contract documents and, during the whole of the dispute about interest rates, and had at no stage referred to the contract documents. Notwithstanding the NAB represented that it was entitled, under the contract (which it had not for that purpose examined), to charge the interest rates about which the complaint had been made.

To add insult to injury, the Bank deemed the loan to be in default after a year and began charging 19.7% interest, instead of rolling over the loan as required by the contract. In fact because of the bank's infamous behavior the loan was never in default, as the Judge explained:

When, eventually, the borrowers were in default by refusing to pay interest at the rates being charged by NAB, that refusal was a direct consequence of the breach by NAB and the dispute between the parties as to the payments to which NAB was entitled. It is, in those circumstances, inappropriate, and inconsistent with the terms of the contract between the parties, to refer to the borrowers as being in default. It follows that NAB should never have applied the default rate and any calculation based upon the applicability of the default rate is, by virtue of the proper construction of the contract and the facts as the Court has found them, incorrect.

The bank's behavior was shown to have prevented the borrowers from reselling or developing the properties and the court ordered:

a) NAB to pay damages to the plaintiffs of $280,000;

b) NAB to calculate the interest payable in accordance the correct interpretation of the contract and refund the difference;

c) NAB to pay the borrower's costs of the proceedings.

Bransgroves have found that this type of behavior is not unusual with the major banks. They particularly seem to prey on people with large loans whose financial affairs are in difficulty. **They use the occasion to gouge out large amounts of penalty interest and fees in the belief that their victims will either be intimidated into agreeing to them or that they will become insolvent and unable to challenge them.** The best way to deal with such behavior is to ask for the payout figure and if it is refused, commence redemption proceedings, and if it is wrong, bring an action for accounts and if necessary damages.

Websites For More Information: NAB V Kay - Bransgrove Lawyers
http://www.bransgroves.com.au/mortgage-case-notes/kay-v-national-australia-bank-ltd-2010-nswsc-1116.html

Source URL (modified on 13 Nov 2016 - 5:23pm): https://bankreformnow.com/node/136