

**RE: Brauer and Rabobank [GQ-BD.FID1207645]**

**From:** Scott Couper <[REDACTED]>  
**To:** Denis McMahon <[REDACTED]>  
**Cc:** Melissa Lo <[REDACTED]>, Jacqueline Ogden <[REDACTED]>  
**Date:** Mon, 18 May 2015 11:12:47 +1000

Denis,  
 Thank you for your email. I have now taken instructions on the matters raised in your email.  
 First, as to the content of the brief to the mediator, your clients were given the opportunity to comment on the content of the brief. Your clients chose not to make any comment on the content of the brief to mediator before it was finalised. We note your comment that you have not yet met with your clients but note Mr Michael has.

We are of the view that the brief accurately sets out the current state of the facility, security and defaults under the facility. The documentation set out in the brief are the current facility and security documents and are those which the Bank relies on. As noted above, your clients were given the opportunity to comment on the content of the brief but chose not to. It is a matter for your clients whether they choose to put further matters or documents to the mediator. If they choose to do so, please ensure that a copy of such information is provided to us.  
 As to the paragraphs 1 to 11 in your below email we note that to the extent that there is a reference to letters of offer and the amount of facilities provided, that information is agreed. However, to the extent that there are other comments made in those paragraphs, the Bank reserves its rights to address those matters at mediation. Accordingly you should not assume that any of the other statements made are agreed by the Bank.

As to the request for further documentation, our client has already responded to requests for information and documentation from Mr Michael and from the borrowers direct.

We note that the parties were directed to exchange position papers by last Tuesday. We wrote to you last Tuesday indicating that we were ready to exchange position papers. It is unfortunate that as at the time of writing we are still to receive your clients' position paper.

As to the additional matters raised in the latter part of your email, the nature of the banking relationship is a topic for discussion at the mediation. However, I am instructed to note that the Bank has acted appropriately throughout the banking relationship and properly assessed the applications for finance which were made by your clients. Any allegations to the contrary are denied. All the Bank's rights are reserved.

Our clients look forward to meeting with your client on 19 May.  
 Regards,

Scott Couper, Partner, gadens  
 [REDACTED] T [REDACTED] F [REDACTED] M [REDACTED]  
 Level 11, 111 Eagle Street, Brisbane, QLD, Australia 4000

gadens.com  
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**From:** Scott Couper  
**Sent:** 15/05/2015 8:40 AM  
**To:** Denis McMahon  
**Cc:** Melissa Lo; Jacqueline Ogden  
**Subject:** RE: Brauer and Rabobank [GQ-BD.FID1207645]

Denis,  
 I refer to your email below.  
 The person from our client from whom I take instructions is on annual leave this week. I am currently seeking instructions on the matters raised in the email below. I will revert to you once I have those instructions.

All of the Bank's rights are reserved.

Regards,

Scott Couper, Partner, gadens  
 [REDACTED] T [REDACTED] F [REDACTED] M [REDACTED]  
 Level 11, 111 Eagle Street, Brisbane, QLD, Australia 4000

gadens.com  
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**From:** Melissa Lo [REDACTED] On Behalf Of Denis McMahon  
**Sent:** 13/05/2015 5:01 PM  
**To:** Jacqueline Ogden; Scott Couper  
**Cc:** Denis McMahon; Melissa Lo  
**Subject:** Brauer and Rabobank

"Without Prejudice"

Dear Scott and Jacqueline,

I refer to the material provided in the brief.

It does not appear to capture the relationship, history, or other matters arising during the relationship.

The writer has not meet with the clients and will not do so until the 17th May 2015. Mr Michael has meet with them and the following has been extracted from the clients' records:

1. The relationship commenced in 2005 with refinance from CBA; Letter of Offer (LOO) 26/04/15; total borrowings of \$700,000 in AIO facility to the partnership "Tim Shay Grazing" expiry 30/04/2020. (3 yr review); Clients advise that they had about 82.5% equity; security provided was over Kia Ora; [REDACTED]
2. LOO 31/08/05 AIO \$700k expiry 30/04/2020 plus additional \$200k expiry 30/09/2020 (3 yr review)
3. 2006 increase of \$100k making AIO \$800k plus existing \$200k
4. 2008 increase of \$200k making AIO \$1m plus \$200k; Total borrowings \$1,200,000.
5. Clients lease Kia Ora with bank's knowledge and consent and relocate to USA for 2 year period as Wendy was originally from America. Term of Lease was to expire in July 2011.
6. In June 2009 bank contacted clients while they were in USA advising that part of "Jamberoo" Taroom was on the market; that another bank customer and friend of the Brauer family was interested in purchasing another part of it (current owners were previous Rabo customers); bank was aware that any offer by them required a lease back of the property to be purchased; that the clients had no money to contribute to the purchase and they would be relying solely upon rental income from both properties as repayments as well as to live on; bank was aware of the clients' concerns regarding the possible termination of the tenancies and when that eventually happens that additional funding to purchase cattle was required; bank was heavily involved in the development of the business plan for the purchase and was aware that ultimately there was a need for funding of cattle purchases;
7. The LOO dated 19th January 2010 provided for new pre settlement conditions including cross secured facilities; Total Borrowings AIO \$3,700,000,000 in one LOO to expire on 30/06/2024 with review on 30/04/2012 and 3 yrs thereafter. Settlement of the purchase of Jamberoo occurred 21/08/2010; Lease back was for a period of 2 yrs with an option of 2yrs.
8. Clients return to Australia 17/03/2011
9. Obtain a temporary extension of \$50k to purchase motor vehicle; repaid in October 2011
10. April 2011 approach bank for \$300k to purchase cattle as lessee on Kia Ora was not exercising option for whole country and balance for only 1.5 yrs;
11. 12/08/2011 AIO account increased to \$4,000,000; expiry 30/06/2024; review 30/04/14 and 3 yrs thereafter; special condition that \$3,000,000 repayment by 30/06/2013 was included; this condition was never discussed with the clients nor pointed out to them before it was sent to them; this additional requirement was barely 12 months from when the loan was made.

Please advise what if any is not agreed to by the bank.

You will recall that we previously requested copies of all correspondence etc exchanged between the parties. So as there is full and frank disclosure, could you please provide copies of all applications, emails, letters and cash flows developed in relation to:

1. The purchase of Jamberoo with the possible scenarios of leases terminating.
2. The application and cash flows in relation to the additional funding of \$300,000.

Several questions arise from the above events.

The bank will have possession of material which is relevant to the below queries and we ask that it provided urgently to avoid unnecessary delay and speculation. Hopefully it will throw light on the matter and adequately address concerns the clients have in relation to the facility. Timely provision of this material may prevent delays and time spent discussing the matters at mediation or being able to reach a satisfactory agreement at mediation.

How did the bank prudentially determine that the clients had a capacity to repay the debt as and when the leases terminated when the loan was approved in 2010?

We assume that the answer to the above could only be through livestock production and farming; please advise how this was intended to be financed and please provide cash flows etc supporting it?

How did the bank justify providing the additional funding of \$300k for livestock when it imposed additional requirements seeking a huge principal reduction?

Why did it not choose a different type of facility for the purchase of livestock?

How did the bank prudentially determine that the clients had a capacity to repay \$3,000,000 of principal on the 30/06/2013?

What prompted the bank to request the payment of 75% of the principal loan within 20 months of providing the loan thus seeking to reduce the debt to below what was owing prior to the purchase of Jamberoo?

We look forward to the provision of the above information and answers as soon as possible.

Kind regards

Denis McMahon  
Lawyer | Farm & Rural Legal Service | Legal Aid Queensland  
p. [REDACTED] | f. [REDACTED]

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