

67 Coronga Crescent
Killara NSW 2071

9 May 2011

Jeff and Terri Kolb
490 Cootharaba Rd
Cootharaba QLD 4565

Dear Jeff & Terri,

Representations that the Lender relied upon when he lent the Borrowers the Loan Amount for the Loan Term

I, hereinafter the Lender, refer to -

- (i) the Loan Agreement dated 4 July 2007, hereinafter the Loan Agreement;
- (ii) First, Final and Only Offer Letter To The Borrowers to execute an Amendment To The Loan Agreement by 31 January 2011; and
- (iii) Terri Kolb's two 'phone calls to the Lender on Wed, 4 May, seeking the Lender's bank account details and requesting a letter which acknowledges receipt of \$50,000.

I confirm that \$50,000 appears as a credit in my bank account 062000 00965207 on Friday, 6 May.

By way of background, I expended most of my career at CBA administering the duties, obligations and rights of syndicates of global banks under complex loan agreements for some very large infrastructure loans. I was fortunate enough to enjoy direct access to some very talented lawyers from Allens, Malesons, Freehills, Minters *'et al'*.

Often after funding a loan, a borrower would find that it couldn't or did not want to comply with a clause(s) or covenant(s) under their syndicated loan agreement, whereupon the borrower would request the lenders to agree to amend one or more clauses under its syndicated loan agreement. In some instances, lenders agreed and in others they declined the request. Material amendments were chronicled by an amendment agreement. Minor amendments were documented in a 'side-letter'.

The Loan Agreement provided you with the material benefit of no interest on a \$50,000 loan for 4 years, predicated upon representations that you gave to your father, Gene, and me prior to executing the Loan Agreement and me funding you \$50,000 in early July 2007. I also relied upon further representations that Gene gave to me.

I wanted to limit the Term to 3 years however, you believed that you need 4 years in order to be in a position to return to work and being better able to rely upon the sub clauses in clause 8(c). On your behalf, Gene asked me to provide a 4 year Term. I acquiesced.

In the lead up to me agreeing, Gene put three of your 'phone calls on speaker 'phone when you were going to inordinate and relentless lengths to exact \$50,000 from him because of a cost blowout that you asserted that you hadn't anticipated and your bank's calculation of the mortgage that you could afford to service on only Jeff's income. Based on what you said to your father during those three conversations, I do not believe that Gene had told you that you were on speaker 'phone and I was listening. I believe that Gene put your 'phone conversations with him on speaker 'phone so that I would understand the pressure that you were placing on him to fund you \$50,000 towards the cost of your second home at Cootharaba .

When Gene told you of my offer to provide your shortfall, instead of being elated that I would “get you out of a scary jam”, you were noticeably disappointed. You then went to inordinate lengths to tell your father that grandparents in Australia materially contribute to the costs of the parents raising their grandchildren, which was news to me. My experience is that parents put in the hard slog to raise their kids, as they are the ones who bring them into the world.

Separately, Gene told me that he expected Jeff and you to live by the sweat of your brow and not Lynn’s and his. When Lynn, Gene and myself are driving to/from camping grounds etc, Gene has regularly volunteered unsolicited opinions of the convictions that he believes that people should live by, and attested that he has lived by the convictions he so regularly and freely has enunciated. Another ‘old chestnut’ of Gene’s is that “there is only one set of facts in a contract, and you should stick to the contract.....If the contract says you got to do it, then you got to do it”. He would occasionally refer that he was bound by contracts in former IT projects with IBM.

Clause 8(c) of the Loan Agreement obligates the Borrowers to repay the Loan Amount to the Lender within 4 years of the Funding Date by applying to their Mortgagee, Bank of Queensland, to borrow an additional \$50,000 against their existing housing loan. That clause was provided based on representation that you proffered as to why Jeff and you had found yourself short by \$50,000 and how you could repay it after you “would have more time to return to work”.

As my bank account has received a \$50,000 credit, and in order for the Lender to provide the Borrowers with a Compliance Certificate that they have complied with their obligations under the Loan Agreement, would you please provide me with a copy of Bank of Queensland’s approval letter where it agreed to increase your mortgage by \$50,000.

NB: Upon arriving last June for a holiday with Gene and Lynn, Gene asked me to extend the Term by 12 months. I asked him why. Gene told me that you wanted to buy a third home. I then emailed my brother who is a stamp duty lawyer with NSW OSR and asked him the stamp duty and other statutory costs of an \$800k home in Qld. He responded. I forwarded that email to Gene. I declined Gene’s request, although as provided in the First, Final and Only Offer Letter, I undertook to fund you interest for 12 months on the Loan Amount. Gene subsequently reverted with a host of new ‘vital reasons re the grandkids’, as to why it was imperative that I extend the Term to 5 years. I declined Gene’s emails and verbals. Alas, Gene seems to have forgotten his mantra about “living off the sweat of one’s brow”, and “there is only one set of facts in a contract”.

I will post this letter to your above address on 10 May 2011.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Phil Johnston', with a large, stylized flourish at the end.

Phil Johnston