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How Suzi lost her business, marriage and home at the stroke of a pen

By John Collett

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Suzi Burge has most of her possessions stored in containers after losing her business, her marriage and her home after the Commonwealth Bank called in her business loan.

Suzi Burge lost her home and other assets after a business loan turned sour.

Photo: Supplied

Ten years ago, she and her then husband had assets worth about $3 million and owed about $800,000 in two mortgages over three properties. The 53-year-old Tasmanian now lives off a disability pension.

In 2008, she and her then husband wanted a business loan to refurbish and extend their commercial premises in Launceston and expand their crafts business.

Burge said they originally made the application for an investment loan over 30 years and this was conditionally approved. But a few weeks before final approval, the bank said it had to be a business loan with the term of 15 years and an interest rate of 9.5 per cent rather than the 7.5 per cent that they would have paid on the investment loan.

The couple had already organised for the work on the business premises to begin. They thought if the bank had approved the loan they must be able to handle the repayments.

They already had a mortgage over the home they lived in and an investment property with another bank and the couple was encouraged to bring this loan to their new bank. When they fell behind on the repayments on the business loan, the debt quickly ballooned.

Financial Ombudsman

Burge took the bank to the Financial Ombudsman Service in 2012 who found that the bank was guilty of "maladministration in lending" and, in effect, that the couple should not have been lent the money in the first place and said she must be treated as a person in financial hardship.

Burge believes the bank extended the loan because it had the security of the couple's three properties. She claims she offered to sell the investment property to clear the business loan debt, which would have allowed her to retain the commercial property and the income from her business. But she says the bank refused.

Instead the commercial property was forcibly sold in 2013 for much less than the bank's valuation and was not enough to clear the debt.

"I then took the bank's refusal to treat me fairly back to the Financial Ombudsman but they said there is nothing they could do about it, it's out of their hands," she says.

With the loss of the business income, Burge said the bank next came for the investment property in early 2016 and then, shortly after, she lost her home as well.

Burge accuses the bank of unconscionable conduct.
A spokesperson for the Commonwealth Bank disputes some of Burge's claims. The Commonwealth Bank reduced her debt by an amount greater than the Financial Ombudsman's determination.

The bank further points out that Burge commenced a number of court actions against the bank seeking injunctions to prevent the bank from taking possession and selling her properties, all of which failed.

"Commonwealth Bank always seeks to engage with customers early when they face financial difficulty," the spokesperson said. "This allows us to discuss various options with them, and to work through any hurdles that may arise in meeting their obligations."

Post-traumatic stress

Burge has been diagnosed with the symptoms of post-traumatic stress disorder, with a clinical psychologist saying she is responding to these events in a way that is similar to someone who has been involved in a life-threatening event.

“I had a happy life, a good life and now I spend every night crying ... I am not the only one ... whose life has been devastated by the actions of banks,” she says.

Despite the bank disputing some details, the story highlights the danger of people going guarantor for their own business loans and putting up family property as security.

But it's not only those going guarantor for themselves who can get into trouble.

Royal commission

The banking royal commission, which is currently looking at small business lending, last week heard from Carolyn Flanagan, who guaranteed a business loan for her daughter and her daughter’s partner to buy a franchise.

Carolyn Flanagan appeared before the royal commission last Monday.

Photo: Elke Meitzel

Flanagan’s house, which she owned outright, was security for the loan. Not long after, the business ran into trouble and Westpac called in the guarantee.

After assistance from Legal Aid and from the Financial Services Ombudsman, Flanagan won the right to remain in her Western Sydney home until she dies or sells the house. Flanagan is a disability pensioner and is legally blind and has other health issues.

Can't say 'no'

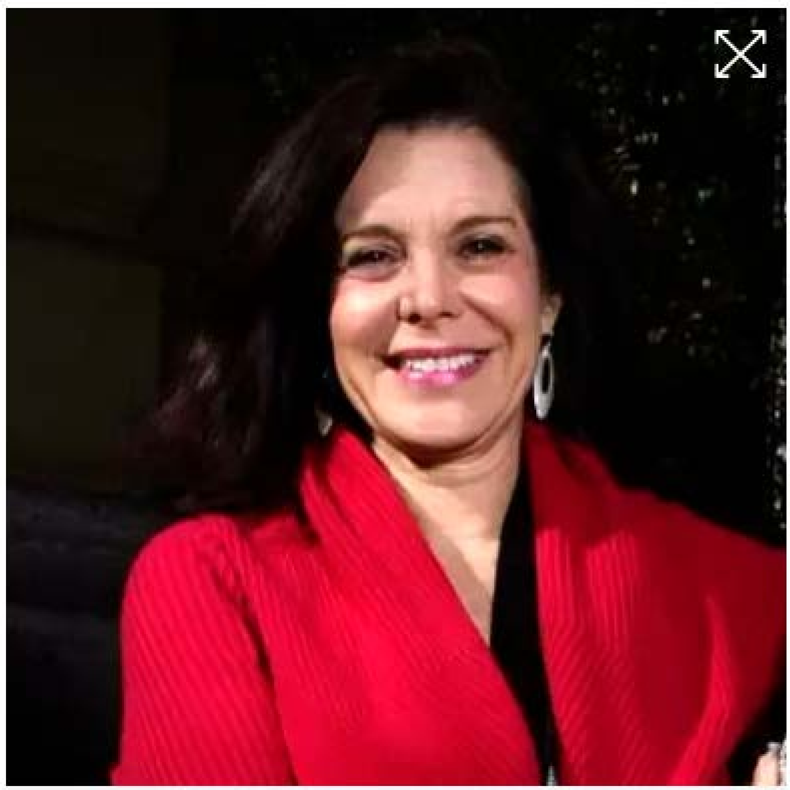
Legal Aid NSW senior solicitor, Dana Beiglari, who represented Flanagan, told the commission it was generally older people who acted as guarantors and in her experience many found it hard to say no to their children.

“It’s that people often want to put family first, they consider that family is paramount, or they might feel some pressure to do what their child asks them to do in order to preserve the relationship."

She said her clients can find it difficult to say no to their son or their daughter.

Laura Menschik, a financial planner and director of WLM Financial, says there is huge difference between going guarantor for a son or daughter looking to get into the property market and going guarantor for a small business loan.

“Even if you had a fire sale on the home and lost 20 per cent of the value you still get something out of it," Menschik says. “A business that fails can have no value. It is so much riskier."



Financial adviser Laura Menschik says it's much safer to go guarantor for a mortgage than for a business loan.

Photo: Tamara Voninski

The results of a study by the NSW Law Reform Commission and the University of Sydney published in 2013 included results of a survey of guarantors.

Personal relationships

One in three guarantors said the borrowing was undertaken to expand an existing business; one in four loans were directed to starting a new business and about one in five loans were required to help an already ailing business.

The survey revealed that more than four out of five guarantors were in a close personal relationship with the borrower.

Of these, nearly two out of five loans were guaranteed by a partner or spouse of the primary borrower; more than one in four had signed as a guarantor for a loan for their adult child, and less than one in five had signed for another relative.

A further 7 per cent signed for a friend; 8 per cent signed for a business associate and the remaining 2 per cent signed either for a business entity or their own company.

Consultant Philip Khoury, who was hired by the Australian Banking Association to review the Association's Code of Banking Practice, told the commission there were concerns about guarantors.

Though he could not find any "real evidence" for this, he had heard from a number of people that "banks were relying too heavily on the presence of a guarantor's assets and not doing sufficient homework on the underlying sustainability of the business loan".

"The argument was that the banks were happy because their risk was attended to by a mortgage over someone's house or some other kind of asset and were not being as diligent as they ought to be around the assessment of the loan," he said.

Guarantors often have no idea

Alexandra Kelly, principal solicitor at the Financial Rights Legal Centre, says at least when you are going guarantor for a residential property loan for your children you will have a good idea of their job security and probably have some knowledge more generally of their financial affairs.

"When you are guaranteeing them for a business loan you have no idea … you are backing how successful that person will be."

Most guarantors of a child's business loan have no connection to the business and are not in a position to do due diligence on the small business, she says.

“You don’t know when they are likely to make a profit if it is a new business and whether they [have the] skills to run the business – that's a big difference,” she says.

Some guarantors think that if the bank has approved the loan, then the business plan is a good one and their children must be able to meet the repayments, she says.

“But the lender wants the guarantee because it is worried that it is not going to work out,” Kelly says.

Her advice for any would-be guarantor is only do it if you are prepared to lose the house or other assets that have been put up as security for the loan.