

See you back in court:

Investors in the developer's collapsed Queensland resort will be watching with interest, writes **John Kehoe**.

A property developer backed by the Dubai royal family and whose prominent clients included former prime minister Bob Hawke is suing Bankwest for putting his luxury Queensland resort into administration.

Rory O'Brien, based in Sydney, alleges that Bankwest recanted on its pledge to roll over his \$175 million loan for the Whisper Bay project in 2009, months after the troubled bank was taken over by Commonwealth Bank of Australia (CBA).

Mr O'Brien claims the 104-villa resort near Airlie Beach, built by Hutchinson Builders, was virtually finished "on time and on budget" in November 2008.

He had secured 10 per cent deposits on \$106 million in pre-sales from buyers and the money was held in a Mallesons trust account, Mr O'Brien said.

"All we had to do was put the front of the office in, the bar and the furniture," he said. "They [Bankwest] put projects like mine down the toilet and destroyed the whole market."

Mr O'Brien lost a NSW Supreme Court case against Bankwest in May, when Justice Robert McDougall ruled that he was liable for the funds his company had borrowed. The decision is being appealed against.

Separately, Mr O'Brien has lodged a cross-claim due to be heard in court in November, arguing that his counter-claim exceeds the amount of money he owes Bankwest.

He alleges that Bankwest engaged in misleading and deceptive conduct and that it was unconscionable for it to terminate the loan facility.

The bank denies the allegations.

CBA rescued the faltering Bankwest for about \$2.1 billion in October 2008 from British-owned HBOS, which was bailed out by Lloyds and the British government

during the global financial crisis. CBA's acquisition has been credited with helping stave off serious damage to Australia's financial system.

But the bank has been hit with complaints from irate Bankwest customers who had their loans foreclosed, interest rates more than doubled, and penalty fees applied.

Mr O'Brien says that he was given repeated assurances that his loan would be rolled over and the fit-out of the hotel funded. He has documents showing the bank confirming its intention in February 2009 to roll over the \$175 million loan in the first week of March 2009 and encouraging him to engage consultants for the hotel fit-out.

Bankwest suddenly threatened to put the project into administration in April 2009.

Mr O'Brien and his Middle East business partner, Essque Hotels and Resorts, were asked to pay \$9 million within seven days, an additional \$11 million within 21 days and an extra \$60 million within eight weeks. Mr O'Brien said this was not enough time in the middle of the financial crisis to arrange alternative financing.

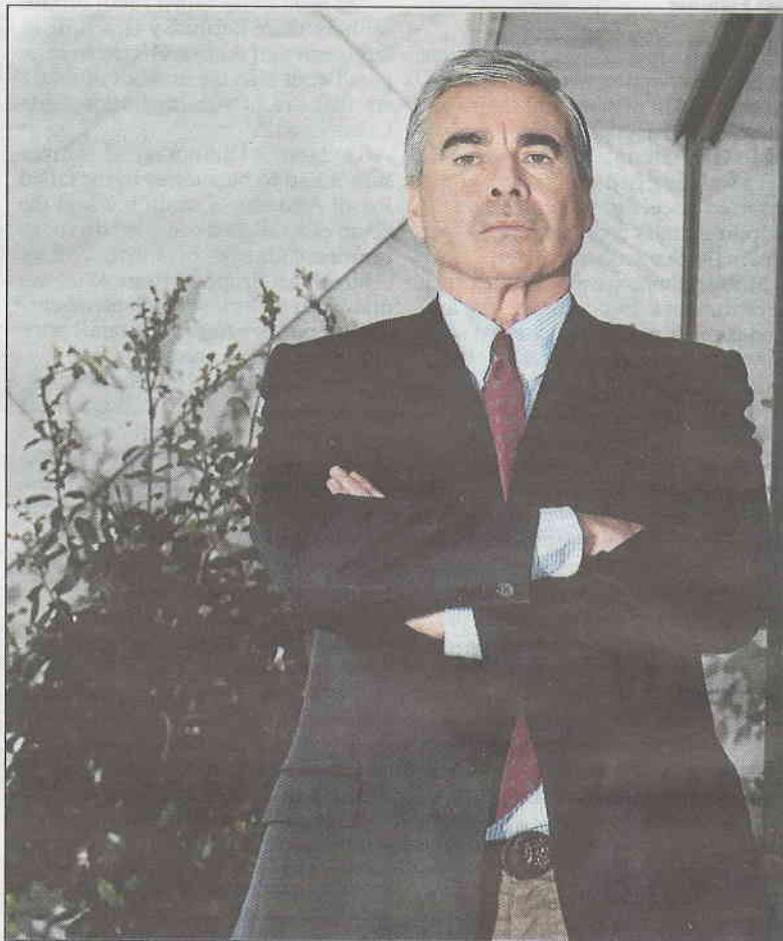
The project was put into the hands of receiver KordaMentha on April 20, 2009.

It was sold 18 months later for \$56 million to Melbourne property developer David Marriner, compared with a valuation of \$255 million by Bankwest's valuer in the middle of 2008.

Airlie Beach was at the epicentre of Queensland's commercial property crash during the financial crisis.

"These buying opportunities only come around once every 20 years," Mr Marriner said in December 2010.

A point of contention for Mr O'Brien is that KordaMentha did



A score to settle: developer Rory O'Brien claims Bankwest 'put his project

not settle any of the pre-sales. The receiver declined to comment publicly.

Mr O'Brien admits that the financial crisis meant some depositors may not have paid the final balance, but he estimates the bank would have collected at least \$75 million in settling the \$106 million of pre-sales and wiped out a large part of the debt.

"When have you seen a bank with money on the table and turn their back on it?" he said. "There was a plethora of high-net-worth people that could have settled and would have settled, but the bank didn't try

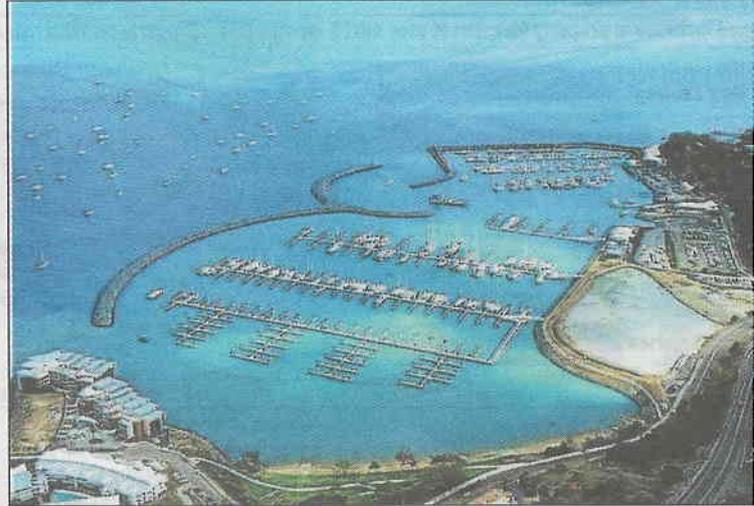
and settle with any of them."

Mr Hawke, who had paid a 10 per cent deposit for a \$2.25 million unit at the resort, heads a list of well-known people who had committed to buying multimillion-dollar apartments and penthouses.

Other high-profile investors who lost their deposits were Alan Thiess, a member of the family that founded construction company Thiess, now owned by Leighton Holdings; Paul Hogan's lawyer Andrew Robinson; British stockbroker Christopher Palmer-Tompkinson; and Becker Film Group founder Richard Becker.

The former prime minister is

O'Brien sues Bankwest



Whisper Bay at Airlie Beach, north Queensland.

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Photo: MICHELE MOSSOP

understood to have contacted then Commonwealth Bank chief executive Ralph Norris to voice his concern about the bank pulling out.

Mr Hawke declined to comment for this story.

In May 2009, Mr Hawke was quoted as saying: "It seemed to me that the place is built ... there was a possibility of an operator and it seemed to me that there was a way through it, but this is a matter between the developer and the bank."

One source familiar with the project says it was misconceived, because it was in a backpacker

location that was difficult to access and the area did not have a beach.

A Bankwest spokesman said it had acted appropriately in its dealings with Mr O'Brien.

"In particular, the bank denies the allegations in relation to the default and sale process.

"Bankwest bears the loss arising from defaulting loans and it is in our clear interests commercially to work with customers in financial difficulty and to minimise any losses on the sale of assets."

Mr O'Brien argues that CBA was able to achieve a "clawback" on the original sale price from Lloyds, by

deliberately foreclosing on loans such as his. "It suited their negotiations with Lloyds, which is effectively the British government, to say 'look at all these impairments'," Mr O'Brien said.

After discovering the poor credit quality in Bankwest's loan book after the takeover, CBA's final purchase price was later reduced by £100 million (about \$200 million at the time), according to an HBOS management report.

CBA has consistently denied that it benefited from engineering defaults. Because the acquisition happened so quickly, due diligence was not finalised at the time. CBA says that the final sale price reflected the balance sheet of Bankwest on December 19, 2008 as determined by an independent accounting firm.

After living in the Middle East from June to December 2008 to secure backing for the Whisper Bay project, Mr O'Brien signed a joint-venture agreement with Essque Hotels and Resorts to manage the resort. Essque is part of the Dubai royal family's Jumeirah Group, which is part-owned by Sheikh Hamdan bin Mohammed bin Rashid al Maktoum (Prince Hamdan).

Mr O'Brien admits that he sought a 10 per cent increase in the loan facility to cover the hotel fit-out and other unforeseen contingencies from the financial crisis.

"There was no more construction risk, the builder had been paid, all the consultants had been paid, the deal was done with the Middle East partners who signed the heads of agreement and the bank embraced them," he said.

A Senate inquiry has heard complaints from about 150 disenchanted Bankwest customers who claim that the bank unfairly and unconscionably foreclosed on their loans after the Commonwealth Bank takeover.

Many had their interest rates jacked up to about 18 per cent.

A report due to be tabled in Parliament this Wednesday is expected to criticise CBA and Bankwest for their conduct.

Separate to Mr O'Brien's case, litigation funder IMF and law firm Maurice Blackburn are believed to be close to confirming a class action on behalf of more than 100 Bankwest customers who were charged penalty interest rates of about 18 per cent after the CBA takeover.