

Banks lose legal fight over ABC Learning

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A SYNDICATE of banks that secured an \$800 million charge over assets of ABC Learning just months before the childcare empire collapsed has failed in its bid to keep confidential thousands of documents sought by the litigation funder, IMF.

Westpac, NAB, ANZ, Bank of America, Citibank, Mizuho Corporate Bank and Bank of Western Australia had fought an application by ABC Learning's liquidators, Peter Walker and Greg Moloney, to hand over 10,000 bank documents to IMF so it could consider whether it would fund a case against the banks.

The documents were obtained by the liquidators during public examinations of ABC Learning and bank officials last year. The liquidators have claimed that the charge is an unfair preference, and is a voidable transaction under the Corporations Act.

In the Federal Court yesterday, Justice Dennis Cowdroy recounted that the bank syndicate had lent ABC Learning \$1.3 billion without security. In June 2008, ABC Learning gave a fixed and floating charge to the banks, five months before administrators were appointed.

Justice Cowdroy agreed there may be confidential information in the documents. "Nevertheless such consideration does not outweigh the greater public interest in ensuring that the liquidators fulfil their statutory obligations, to make recovery for the interest of creditors and shareholders of ABC Learning ... and to institute proceedings wherever a valid cause of action may exist."

As well as securing the charge over assets, months before the collapse the banks received \$500 million in debt repayments funded by the sale of ABC Learning assets. Australia's big banks still took heavy losses. ANZ, National Australia Bank, Westpac and Commonwealth Bank accounted for debts totalling \$760 million.

Outside the court, IMF's executive director, John Walker, said he needed to see the documents to make sure the liquidators had a good claim.

"The banks have been unsuccessful in their attempt to seek to limit the financial resources available to the liquidators," he said.