

## NOTICE OF FILING

### Details of Filing

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File Title: WESTPAC BANKING CORPORATION ABN 33 007 457 141 & ANOR v  
FORUM FINANCE PTY LIMITED (IN LIQUIDATION) ACN 153 301 172 &  
ORS  
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



*Sia Lagos*

Registrar

### Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date of the filing of the document is determined pursuant to the Court's Rules.



Form 59  
Rule 29.02(1)

### Affidavit

No. NSD 616 of 2021

Federal Court of Australia  
District Registry: NSW  
Division: General

**Westpac Banking Corporation ABN 33 007 457 141** and another  
Applicants

**Forum Finance Pty Limited (In Liquidation) ACN 153 301 172** and others  
Respondents

Affidavit of: **Jason Preston**  
Address: Level 12, 20 Martin Place, Sydney NSW 2000  
Occupation: Registered Liquidator  
Date: 20 February 2023

I, Jason Preston, of Level 12, 20 Martin Place, Sydney NSW 2000, Registered Liquidator, affirm:

- 1 I am a Partner in the Restructuring practice of McGrathNicol, a Chartered Accountant (admitted as a member of the Chartered Accountants Australia and New Zealand) and a Registered Liquidator.
- 2 I have over 20 years' experience undertaking complex restructuring and turnaround assignments, capital reorganisations and formal liquidation administrations.
- 3 I believe that the information contained in this affidavit is true.

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Filed on behalf of (name & role of party) Prepared by (name of person/lawyer) Law firm (if applicable) Tel (02) 9230 4000 Email <a href="mailto:Chris.Prestwich@allens.com.au">Chris.Prestwich@allens.com.au</a> ; <a href="mailto:Kirsty.Prinsloo@allens.com.au">Kirsty.Prinsloo@allens.com.au</a>	Jason Preston and Jason Ireland in their capacities as joint and several liquidators of the First, Fourth to Thirteenth, Sixteenth, Twenty-Third, Twenty-Fifth, Twenty-Eighth, Thirtieth, Thirty-First, Thirty-Sixth to Thirty-Eighth, Fortieth and Forty-First Respondents <hr/> Chris Prestwich <hr/> Allens <hr/> Deutsche Bank Place, 126 Phillip Street, Sydney NSW 2000 Email: <a href="mailto:Chris.Prestwich@allens.com.au">Chris.Prestwich@allens.com.au</a> ; <a href="mailto:Kirsty.Prinsloo@allens.com.au">Kirsty.Prinsloo@allens.com.au</a> DX: 105 Sydney
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4 Exhibited to me at the time of swearing this affidavit is an electronic bundle of documents marked "Exhibit JP-19". Where I refer to a document by page number noting Exhibit JP-19, I am referring to the corresponding page number in Exhibit JP-19.

5 Jason Ireland and I are appointed joint and several liquidators (*Liquidators*) of:

- (a) The First, Fourth to Thirteenth, Sixteenth, Twenty-Third, Twenty-Fifth, Twenty-Eighth, Thirtieth, Thirty-First, Thirty-Sixth to Thirty-Eighth, Fortieth and Forty-First Respondents to proceeding NSD 616/2021 (*Westpac Proceeding*);
- (b) The First, Third to Fourteenth, Twentieth to Twenty-Fifth Respondents to proceeding NSD 681 of 2021 (*SMBC Proceeding*); and
- (c) The First and Third Respondents to proceeding NSD 642 of 2021 (*SocGen Proceeding*).

(each a *Forum Appointment Respondent* and together the *Forum Appointment Respondents*).

6 When used in this affidavit, the term *Forum Respondent*, refers to a respondent in one or more of the Westpac Proceeding, the SMBC Proceeding or the SocGen Proceeding (including individuals and entities to which the Liquidators are not appointed).

7 By Court order, the Liquidators were also appointed as receivers and managers (*Receivers*) of property owned (or formerly owned) by:

- (a) 14 James Street Pty Limited (In Liquidation) (Receivers and Managers Appointed) (the Ninth Respondent in the Westpac Proceeding) (**14 James**) as trustee of the 14 James Street Unit Trust, namely the following real properties:
  - (i) 16 James St, Clayton South VIC 3169, Vol: 12170 Folio: 467;
  - (ii) Warehouse 1, 9 Parsons St, Clayton South VIC 3169, Vol: 12170 Folio: 465;
  - (iii) Warehouse 2, 9 Parsons St, Clayton South VIC 3169, Vol: 12170 Folio: 468;
  - (iv) Warehouse 3, 9 Parsons St, Clayton South VIC 3169, Vol: 12170 Folio: 479;
  - (v) 10 James Street, Clayton South VIC 3169, Vol: 12170 Folio: 472;
  - (vi) 12 James Street, Clayton South VIC 3169, Vol: 12170 Folio: 471;
  - (vii) 14 James Street, Clayton South VIC 3169, Vol: 12170 Folio: 470;
  - (viii) 18 James Street, Clayton South VIC 3169, Vol: 12170 Folio: 466; and
  - (ix) 8 Olive Street, Clayton South VIC 3169, Vol: 12170 Folio: 474,
- (b) 26 Edmonstone Road Pty Ltd (In Liquidation) (Receivers and Managers Appointed) (the Tenth Respondent in the Westpac Proceeding and the Twentieth Respondent in the SMBC Proceeding) (**26 Edmonstone**) as trustee of the 26 Edmonstone Road Unit Trust namely the property 26 Edmondstone Road, Bowen Hills QLD 4006, Title Ref: 12134186;
- (c) 5 Bulkara Street Pty Ltd (In Liquidation) (Receivers and Managers Appointed) (the Eleventh Respondent in the Westpac Proceeding and the Twenty-First Respondent in the

- SMBC Proceeding) (**5 Bulkara**) as trustee of the 5 Bulkara Street Unit Trust namely the property 5 Bulkara Street, Wagstaffe NSW 2257 Folio: 2/1141260;
- (d) 6 Bulkara Street Pty Ltd (In Liquidation) (Receivers and Managers Appointed) as trustee of the 6 Bulkara Street Unit Trust namely the property 6 Bulkara Street, Wagstaffe, NSW 2257 Folio: 3/1141260;
- (e) 64-66 Berkeley Street Hawthorn Pty Ltd (In Liquidation) (Receivers and Managers Appointed) (the Twelfth Respondent in the Westpac Proceeding and the Twenty-Second Respondent in the SMBC Proceeding) as trustee of the 64-66 Berkeley Street Hawthorn Unit Trust namely the property 64-66 Berkeley Street, Hawthorn VIC 3122, Vol: 12160 Folio: 016;
- (f) 9 Gregory Street Ouyen Pty Ltd (In Liquidation) (Receivers and Managers Appointed) (the Twenty-Third Respondent in the Westpac Proceeding) as trustee of the 9 Gregory Street Ouyen Unit Trust namely property 9 Gregory Street, Ouyen VIC 3490, Vol: 06684 Folio: 757; and
- (g) Intrashield Pty Ltd (In Liquidation) (Receivers and Managers Appointed) (**Intrashield**), the Thirty-Seventh Respondent in the Westpac Proceeding and the Eleventh Respondent in the SMBC Proceeding namely the "XOXO" Motor Yacht Cayman Island Official Number 734587 (**XOXO Yacht**).

#### Relevant systems and documents

- 8 In my capacity as Liquidator of the Forum Appointment Respondents, I have access to the records of the Forum Appointment Respondents. These records relate to, among other things, the bank accounts of the Forum Appointment Respondents and the ownership by the Forum Appointment Respondents of various assets such as real properties and motor vehicles.
- 9 Certain books and records of the Forum Appointment Respondents are retained on the following electronic systems to which I and my team have access:
- (a) *Business Management System* – a database which stores a large number of documents and accounting records of various Forum Appointment Respondents;
- (b) *Lotus Notes* – a database which stored documents for the Forum Appointment Respondents (except Iugis related entities);
- (c) *Sharepoint* – being a web-based document management and storage system used by Iugis related entities and Forum Group Financial Services Pty Ltd (In Liquidation) (**FGFS**);
- (d) *Netsuite* – the accounting software used by Iugis related entities immediately prior to my appointment;
- (e) *Xero* – the accounting software used by FGFS; and
- (f) *Forum Server* – being where the emails of employees of the Forum Appointment Respondents were stored.




- 10 I am also familiar with, and have access to, books and records concerning the Liquidators' sale of certain assets of the Forum Appointment Respondents.

**Table of Forum Appointment Respondent Assets**

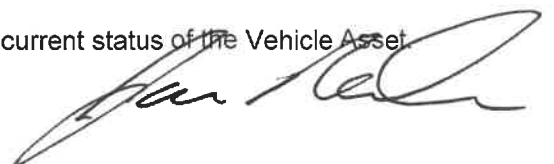
- 11 At the request of the Applicants in the Westpac Proceeding and the SMBC Proceeding, I and others in my employ have undertaken a process to ascertain the current asset position of each of the Forum Appointment Respondents save for assets subject to other external administrators.
- 12 At my direction, the following information in relation to the certain assets of each Forum Appointment Respondent was compiled into a table (***Table of Forum Appointment Respondent Assets***):
- (a) The current cash balance (which includes residual proceeds of any assets of that Forum Appointment Respondent which has been sold and which has not been applied to expenses that have been incurred in connection with the respective liquidation/receivership);
  - (b) A current list of certain non-cash assets which have not yet been realised;
  - (c) For each of those assets which have not yet been realised, my best estimate of the net realisable value, being my best estimate of the gross realisable value of the asset, less any amounts owing to secured parties and selling costs (i.e. agent costs, marketing costs etc) but before the costs and expenses of the Liquidators in relation to the respective Forum Appointment Respondent and/or respective asset;
  - (d) The total net realisable value for all listed assets which have not yet been realised; and
  - (e) A total of the amounts described in paragraphs 12(a) and (d).
- 13 In compiling the information contained in the Table of Forum Appointment Respondent Assets:
- (a) At my direction, the name of each of the Forum Appointment Respondents was listed in the column entitled '*Forum Appointment Respondent*';
  - (b) At my direction, a review was conducted of the bank account records or correspondent with the account bank advising showing the balance of the bank accounts held by each of the Forum Appointment Respondents with credit balances as at the date of my appointment, noting these accounts, which remain subject to freezing orders made in the Westpac Proceeding and therefore are not currently in my control or available to the Liquidators. Those balances were extracted in the column entitled '*Balance of accounts opened prior to the Liquidators' appointment as at 28.10.2022 (unless otherwise stated)*';
  - (c) At my direction on 13 February 2023, a staff member in my employ logged into the online banking platform maintained by the National Australia Bank and reviewed the current bank account balances of the accounts held of each of the Forum Appointment Respondents. Those balances were extracted into the column entitled '*Balance of accounts opened after the Liquidators' appointment as at 13.02.2023*';

- (d) I, and those in my employ, had regard to the books and records of the Forum Appointment Respondents, as well as listings of assets previously prepared at my direction, in identifying which of the non-realised assets for which it may be commercial to take steps to recover and which may have a reasonable prospect of recovery (referred to in paragraph 12(b) above. Save for intercompany loans and Vehicle Assets (as that term is defined below), those assets are extracted into the column entitled '*Description of non-realised assets as at 20.02.2023*';
- (e) In respect of each of those non-realised assets, where possible, my best estimate of the net realisable value for that asset is extracted into the column entitled '*Estimated net realisable value (ENRV) of non-realised assets as at 20.02.2023*'. I have made that estimate based on my experience as an insolvency practitioner in selling assets and any valuations obtained by the Liquidators and/or Receivers. Where this column contains 'TBC', I am not currently in possession of sufficient information or documents to form a view as to the ENRV of that asset. Where I have included a value for the ENRV, at my direction those amounts have been sub-totalled in a row below the last ENRV value for that Forum Respondent in a row entitled '*Total ENRV*'; and
- (f) At my direction, the total of the columns discussed in paragraphs 11(a) to (e) was extracted into the column entitled '*Total*'.

14 At page 1 to 6 of Exhibit JP-19 is a copy of the Table of Forum Appointment Respondent Assets.

#### **Vehicle Assets**

- 15 At the request of the Applicants in the Westpac Proceeding, I and others in my employ have undertaken a process to ascertain the current position in respect of certain motor vehicles, boats, jet-skis and a camper trailer (**Vehicle Assets**). The Vehicle Assets were either:
- (a) Owned by or registered to a Forum Respondent;
- (b) Funded, at least in part, from funds advanced by a Forum Appointment Respondent, or under a financing agreement in the name of a Forum Appointment Respondent;
- (c) Were located at a property owned by a Forum Respondent or
- (d) Were owned by or registered to a director of a Forum Respondent.
- 16 At my direction, the following information in relation to the Vehicle Assets was compiled into a table (**Table of Vehicle Assets**):
- (a) A description of the Vehicle Asset;
- (b) The VIN/Chassis of the Vehicle Asset;
- (c) The registration number and registered owner of the Vehicle Asset;
- (d) The Forum Respondent that the Vehicle Asset is associated with and the reason for that association;
- (e) Whether the Vehicle Asset has been realised by the Liquidators; and
- (f) To the best of my knowledge, a summary of the current status of the Vehicle Asset.

17 In compiling the information contained in the Table of Vehicle Assets:

- (a) At my direction, searches were undertaken of the records of the Forum Appointment Respondents to identify the information set out in paragraphs 16(a) to 16(c) above. Where the information was not available in the books and records of the Forum Appointment Respondents, at my direction, searches were undertaken of the New South Wales and Victorian vehicle registration databases to obtain that information. The results of these searches were extracted in the first four columns of the Table of Vehicle Assets, entitled:
- (i) 'Asset;
  - (ii) 'VIN/Chassis number';
  - (iii) 'Registration number'; and
  - (iv) 'Registered owner (as at the date of the Liquidators' appointment)'.
- (b) At my direction, a review was conducted of the books and records of the Forum Appointment Respondents to identify:
- (i) Where a Forum Respondent was the registered owner, how the acquisition of the Vehicle Asset was financed by reference to, among other things, the bank and accounting records of FGFS;
  - (ii) Where a Forum Respondent was not the registered owner, whether a Forum Appointment Respondent:
    - (A) Paid acquisition costs, ongoing maintenance or on-road costs such as insurance for that Vehicle Asset; or
    - (B) Was the obligor under a financing agreement for the acquisition of the Vehicle Asset.

The results of these searches were extracted into the fifth and sixth columns entitled '*Forum Respondent(s) the asset is associated with*' and '*Reason for association*'.

- (c) Where, to the best of my knowledge, a Vehicle Asset has been realised, that is identified in the column entitled '*Has the asset been realised?*'; and
- (d) Extracted in the final column entitled '*Current status*' is the current status of the Vehicle Asset to the best of my knowledge.

18 At page 7 to 10 of Exhibit JP-19 is a copy of the Table of Vehicle Assets.

**Certain Cash Assets not in the Liquidators' control**

19 At the request of the Applicants in the Westpac Proceeding and, save for the Agostino Property Proceeds as defined below, the Applicants in the SMBC Proceeding, I and those in my employ, have undertaken a process to identify the net recoveries made in respect of:

- (a) 23 Margaret Street, Rozelle NSW 2039, being property formerly owned by 23 Margaret Street Pty Ltd (In Liquidation) (the Thirteenth Respondent in the Westpac Proceeding and

the Twenty-Third Respondent in the SMBC Proceeding) in its capacity as trustee of the 23 Margaret Street Unit Trust (**Margaret Street**). This property was sold prior to the Liquidators' appointment to Margaret Street;

- (b) 1160 Glen Huntly Road, Glen Huntly, 3163 being a property formerly owned by 1160 Glen Huntly Road Pty Ltd (the Fourteenth Respondent in the Westpac Proceeding) (**Glen Huntly**);
- (c) 8-12 Natalia Avenue, Oakleigh South VIC 3167 (**Natalia Ave**); and
- (d) Unit 413, 3 Nagurra Place, Rozelle 2039 being a property formerly owned by Louisa Maria Agostino, the Forty-Seventh Respondent in the Westpac Proceeding (**Agostino Property Proceeds**),

together, the **Non-Controlled Cash Assets**.

20 At my direction, the following information in relation to the Non-Controlled Cash Assets was compiled into a table (**Table of Non-Controlled Cash Assets**):

- (a) The relevant Forum Respondent, was extracted in the column entitled '*Forum Respondent*';
- (b) The quantum of each of the Non-Controlled Cash Assets, to the best of my knowledge and based on the documents listed at paragraph 28 below, has been extracted into column entitled '*Quantum*'; and
- (c) Extracted into the column entitled '*Current status*', is the entity who, based on the documents listed at paragraph 28 below and to the best of my knowledge, is currently in control of those cash assets.

21 The Table of Non-Controlled Cash Assets is at page 11 of Exhibit JP-19.

**Property Assets not in the Liquidators' control**

22 At the request of the Applicants in the Westpac Proceedings, at my direction, the information set out in paragraph 25 below was compiled into a table in respect of various real properties (**Table of Non-Controlled Property Assets**).

23 Save for the entry in relation to the Hartington Street and Blenheim Street properties, the registered proprietors of the properties in the Table of Non-Controlled Property Assets:

- (a) Are Forum Respondents;
- (b) Are the principal obligors to vendor finance facilities with Aksara Holdings Pty Ltd (**Aksara**), secured by 14 James and 5 Bulkara (**Aksara Loan**); and
- (c) Had liquidators appointed on 16 December 2022, being Paul Allen and Glenn Franklin of PKF Australia.

24 The properties listed in the Table of Non-Controlled Property Assets are not currently controlled by or in the possession of the Liquidators.

25 The below information was compiled into the Table of Non-Controlled Property Assets:



- (a) The Forum Respondent which is the registered proprietor of the property was extracted into the column entitled '*Forum Respondent*';
- (b) The address of the property was extracted into the column entitled '*Property address*';
- (c) The extent of the Liquidators' potential recovery in respect of the property was extracted to the column entitled '*Extent of potential Liquidator recovery*'. This amount corresponds with the loan ledger for that entity recorded on the FGFS Balance Sheet; and
- (d) Extracted in the final column entitled '*Current status*' is the current status of the property to the best of my knowledge.

26 At page **12** to **13** of Exhibit JP-19 is a copy of the Table of Non-Controlled Property Assets.

**Relevant source documents**

- 27 Copies of the balance sheets of the following Forum Appointment Respondents, as at the Liquidators' appointment:
- (a) 26 Edmonstone at page **14** of Exhibit JP-19;
  - (b) Forum Enviro Pty Ltd (In Liquidation), the Sixth Respondent in the Westpac Proceedings and Third Respondent in the SMBC Proceedings at page **15** of Exhibit JP-19;
  - (c) FGFS at page **16** of Exhibit JP-19;
  - (d) Forum Group of Companies Pty Ltd (In Liquidation) the Thirtieth Respondent in the Westpac Proceedings and Seventh Respondent in the SMBC Proceedings at page **19** of Exhibit JP-19;
  - (e) Forum Finance Pty Ltd (In Liquidation), the First Respondent in the Westpac Proceedings and Sixth Respondent in the SMBC Proceedings at page **20** of Exhibit JP-19;
  - (f) Forum Group Pty Ltd (Receivers and Managers Appointed) (In Liquidation), the Fifth Respondent in the Westpac and SMBC Proceedings at page **21** of Exhibit JP-19;
  - (g) Imagetec Financial Services Pty Ltd (In Liquidation), Ninth Respondent in the SMBC Proceedings at page **22** of Exhibit JP-19;
  - (h) Intrashield at page **23** of Exhibit JP-19; and
  - (i) Iugis Pty Ltd Pty Ltd (In Liquidation), Thirty-First Respondent in the Westpac Proceedings and Thirteenth Respondent in the SMBC Proceedings at page **24** to **25** of Exhibit JP-19.

There have been no made payments received since that time in respect of the intercompany loans.

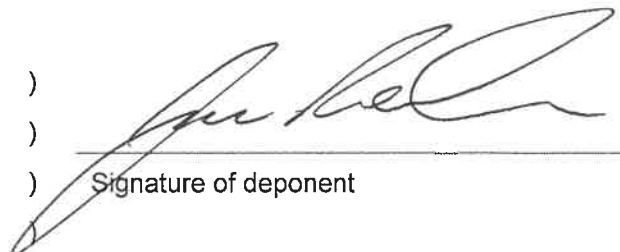
28 At my direction, the following documents were relied upon in compiling the information in the Table of Non-Controlled Cash Assets:

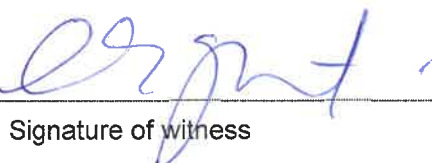
- (a) In respect of Margaret Street:
  - (i) The bank statement from account 033003 667565 with a printed date of 13 February 2023 which shows the balance as at that date to be \$272,023.63. A copy of this bank statement is at page **26** of Exhibit JP-19;




- (ii) The bank statement from account 033003 667565 for the period 23 August 2022 to 23 November 2023. A copy of this bank statement is at pages **27 to 31** of Exhibit JP-19;
  - (b) In respect of Glen Huntly, a letter from the Legal Administration Team of the Supreme Court of Victoria dated 4 March 2022. A copy of this letter is at page **32** of Exhibit JP-19.
  - (c) In respect of Natalia Ave:
    - (i) Orders of Justice Lee dated 1 October 2021 in the Westpac Proceeding. A copy of these orders are at pages **33 to 35** of Exhibit JP-19;
    - (ii) Email from Joanna Huynh, Finance Coordinator at the NSW Registry of the Federal Court of Australia dated 13 October 2021. A copy of this email, and its attachment, is at pages **36 to 37** of Exhibit JP-19;
    - (iii) Letter from Arnold Bloch Leibler to McGrathNicol dated 31 January 2023. A copy of this letter, without its enclosures, is at pages **38 to 39** of Exhibit JP-19.
  - (d) In respect of the Agostino Property Proceeds, a trust account ledger from Harris Freidman Lawyers. A copy of this ledger is at pages **40 to 41** of Exhibit JP-19.
- 29 At my direction, the following documents were relied upon in compiling the information in the Table of Non-Controlled Property Assets:
- (a) Title searches conducted in respect of each of the properties in the Table of Non-Controlled Property Assets. Copies of these titles searches is at pages **42 to 77** of Exhibit JP-19;
  - (b) Deeds of Loan with Aksara. A copy of these Deeds of Loan is exhibited at pages **78 to 226** of Exhibit JP-19; and
  - (c) The loan ledger for each of the registered proprietors as listed on the FGFS Balance Sheet.

Affirmed by the deponent  
 at Sydney  
 in New South Wales  
 on 20 February 2023  
 Before me:

)  
 )  
 )   
 ) Signature of deponent  
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 \_\_\_\_\_  
 Signature of witness  
 Caitlin Louise McTaggart  
 Solicitor

Federal Court of Australia

District Registry: NSW

Division: General

**Westpac Banking Corporation ABN 33 007 457 141 and another**

Applicants

**Forum Finance Pty Limited (In Liquidation) ACN 153 301 172 and others**

Respondents

Affidavit of: **Jason Preston**

Address: Level 12, 20 Martin Place, Sydney NSW 2000

Occupation: Registered Liquidator

Date: 20 February 2023

**Exhibit Certificate**

This is the Exhibit marked "**JP-19**" produced and shown to Jason Preston at the time of affirming his affidavit this 20 February 2023.

Before me:



Signature of witness

Caitlin Louise McTaggart

Solicitor