

## NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 28/06/2022 3:25:17 PM AEST and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

### Details of Filing

Document Lodged: Affidavit - Form 59 - Rule 29.02(1)  
File Number: NSD616/2021  
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*

Dated: 28/06/2022 3:34:55 PM AEST

Registrar

### Important Information

As required by the Court's Rules, 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 and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



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 Ltd ACN 153 301 172 (In Liquidation) and others**  
Respondents

Affidavit of: **Jason Ireland**  
Address: Level 12, 20 Martin Place, Sydney NSW 2000  
Occupation: Registered Liquidator  
Date: 28 June 2022

I, Jason Ireland 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. I, together with Jason Preston, am a joint and several liquidator of the First, Fourth to Seventh, Ninth to Twelfth, Twenty-Eighth, Thirtieth, Thirty-First, Thirty-Sixth and Thirty-Seventh Respondents.
- 2 I believe that the information contained in this affidavit is true.

Filed on behalf of (name & role of party)	Jason Preston and Jason Ireland in their capacity as liquidators of the First, Fourth to Seventh, Ninth to Twelfth, Twenty-Eighth, Thirtieth, Thirty-First, Thirty-Sixth and Thirty-Seventh Respondents		
Prepared by (name of person/lawyer)	Chris Prestwich		
Law firm (if applicable)	Allens		
Tel	02 9230 4000	Fax	02 9230 5333
Email	Chris.Prestwich@allens.com.au; Kirsty.Prinsloo@allens.com.au		
<b>Address for service</b> (include state and postcode)	Deutsche Bank Place, Level 28, 126 Phillip Street, Sydney NSW 2000 Email: Chris.Prestwich@allens.com.au; Kirsty.Prinsloo@allens.com.au DX: 105 Sydney		

[Version 3 form approved 02/05/2019]

3 I make this affidavit in response to the Interlocutory Application filed on behalf of the Third Respondent, Vincenzo Frank Tesoriero on 17 June 2022 (***June Interlocutory Application***) seeking orders that:

- (a) The freezing orders made against Mr Tesoriero be varied; and
- (b) Funds paid into the controlled monies account in accordance with orders made by Justice Lee on 9 February 2022, or a release from those funds paid into Court, be released to Mr Tesoriero.

4 Exhibited to me at the time of affirming this affidavit is an electronic bundle of documents marked 'Exhibit JI-6'. Where I refer to a document by page number noting Exhibit JI-6, I am referring to the corresponding page number in Exhibit JI-6.

5 I have read the affidavit of Vincenzo Frank Tesoriero sworn on 17 June 2022 in support of the June Interlocutory Application (***Tesoriero Affidavit***).

#### **Appointment of Receivers**

6 By Court order made on 3 September 2021 (***Orders***), Jason Preston and I were appointed receivers and managers (***Receivers***) pursuant to s 57 of the *Federal Court of Australia Act 1967* (Cth), of the following assets:

<b>Registered Proprietor</b>	<b>Properties</b>
Properties held by 14 James Street Pty Limited (In Liquidation) as trustee of the 14 James Street Unit Trust (together, the <b><i>James Street Properties</i></b> )	16 James St Clayton, South VIC 3169 Vol: 12170 Folio: 467
	Warehouse 1, 9 Parsons St, Clayton South VIC 3169 Vol: 12170 Folio: 465
	Warehouse 2, 9 Parsons St, Clayton South VIC 3169 Vol: 12170 Folio: 468
	Warehouse 3, 9 Parsons St, Clayton South VIC 3169 Vol: 12170 Folio: 479
	10 James Street, Clayton South VIC 3169 Vol: 12170 Folio: 472
	12 James Street, Clayton South VIC 3169 Vol: 12170 Folio: 471
	14 James Street, Clayton South VIC 3169 Vol: 12170 Folio: 470
	18 James Street, Clayton South VIC 3169 Vol: 12170 Folio: 466
	8 Olive Street, Clayton South VIC 3169 Vol: 12170 Folio: 474
	Property held by 26 Edmonstone Road Pty Ltd (In Liquidation) as trustee of the 26 Edmonstone Road Unit Trust ( <b><i>Edmonstone</i></b> )

<b>Registered Proprietor</b>	<b>Properties</b>
<b><i>Road Property</i></b>	
Property held by 5 Bulkara Street Pty Ltd (In Liquidation) as trustee of the 5 Bulkara Street Unit Trust ( <b><i>5 Bulkara</i></b> )	5 Bulkara Street, Wagstaffe NSW 2257 Folio: 2/1141260
Property held by 6 Bulkara Street Pty Ltd (In Liquidation) as trustee of the 6 Bulkara Street Unit Trust ( <b><i>6 Bulkara</i></b> )	6 Bulkara Street, Wagstaffe NSW 2257 Folio: 3/1141260
together, the <b><i>Real Properties</i></b>	
Property formerly owned by Intrashield Pty Limited (In Liquidation) ( <b><i>XOXO Yacht</i></b> )	"XOXO" Motor Yacht Cayman Islands Official Number 734587
together, the <b><i>Properties</i></b>	

7 A copy of the Orders is at page 1 of Exhibit JI-6.

#### **Security held over the Real Properties**

8 Each of the Real Properties are (or prior to their sale were) subject to various registered dealings as follows:

- (a) A registered mortgage in favour of National Australia Bank (***NAB***) registered on title of the James Street Properties, 5 Bulkara and 6 Bulkara;
- (b) A registered mortgage in favour of La Trobe Financial registered on title of the Edmonstone Road Property;
- (c) A caveat lodged by Aksara Holdings Pty Ltd (***Aksara***) in respect of an unregistered second-ranking equitable mortgage registered on each of the Real Properties save for the Edmonstone Road Property and 6 Bulkara; and
- (d) A caveat lodged by Westpac Banking Corporation (***Westpac***) in respect of its proprietary claims alleged in this proceeding registered on title of each of the Real Properties.

9 The mortgages in favour of NAB secure:

- (a) Home loans that NAB has provided in relation to 5 Bulkara (approximately \$3,680,000), 6 Bulkara (approximately \$5,950,000) and one business banking facility comprising of two tranches of funding provided in respect of the 14 James Street Unit Trust (approximately \$2,800,000 and \$436,800) (***JS Facility***); and
- (b) Amounts which 5 Bulkara Street Pty Ltd has guaranteed to NAB, as follows:

- (i) the amounts owed by Forum Group Pty Limited (In Liquidation) (**FG**) to NAB (which I understand to be in the order of \$1,200,000 once fees and costs are included) (**FG Facility**); and
- (ii) one tranche of funding provided under the JS Facility for \$2,800,000, together, the **NAB Debt**.

10 The caveat lodged by Aksara relates to three tranches of vendor finance provided by Aksara. This vendor finance was secured by an unregistered second ranking mortgage over:

- (a) Two tranches of petrol station properties held by various companies controlled by Mr Tesoriero and funded in part by a vendor finance facility provided by Aksara. 5 Bulkara Street Pty Ltd (In Liquidation) guaranteed these facilities; and
- (b) Third vendor finance facility provided by Aksara to fund the purchase of 9 Gregory Street Ouyen Pty Ltd and 22 High Street Rushworth, by companies associated with Mr Tesoriero. 14 James Street Pty Ltd (In Liquidation) guaranteed this facility,

together, the **Aksara Debt**.

11 The caveats lodged by Westpac relate to its proprietary claims in NSD 616 of 2021 against the registered proprietor of each of the Real Properties. In that regard, each of the Real Properties were purchased in part using funds from Forum Group Financial Services Pty Limited (in liquidation) (**FGFS**).

### **James Street Properties**

12 14 James Street Pty Ltd ACN 638 449 206 (In Liquidation) as trustee of the 14 James Street Unit Trust is the registered proprietor of the James Street Properties. There are 100 units on issue for the 14 James Street Unit Trust which are held as follows:

- (a) 50 units held by Tesoriero Investment Group Pty Ltd ACN 161 088 115 as trustee of the Tesoriero Investment Trust (the beneficiaries of which are Giovanni Tesoriero, Caterina Tesoriero, Vincenzo Tesoriero and Teresa Tesoriero); and
- (b) 50 units held by Vintes QLD No. 3 Pty Ltd ACN 640 879 152 as trustee of MAZ Trust No. 3 (the beneficiaries of which are Anthony Papadimitriou, Marcus Papadimitriou and Zachary Papadimitriou).

13 In respect of the James Street Properties I am aware of the following claims:

<b>Claimant</b>	<b>Nature of claim</b>	<b>Amount of claim</b>	<b>Security</b>
NAB	JS Facility	Tranche 1: \$2,800,000	Real property

<b>Claimant</b>	<b>Nature of claim</b>	<b>Amount of claim</b>	<b>Security</b>
		Tranche 2: \$436,800	mortgage
Westpac	Proprietary and damages claims	\$253,766,555	Caveat
Westpac New Zealand Limited ( <b>WNZL</b> )	Proprietary and damages claims	NZD 44,097,969	N/A
Aksara	Guarantee claim	\$315,000	Non-registered equitable mortgage
FGFS	Intercompany loan	\$2,838,193	N/A

- 14 The Receivers have sold the James Street Properties, however settlement has not yet occurred.

#### **Edmonstone Road Property**

- 15 26 Edmonstone Road Pty Ltd ACN 622 944 129 (In Liquidation) in its capacity as trustee of the 26 Edmonstone Road Unit Trust is the registered proprietor of the Edmonstone Road Property. There are 2 units on issue for the 26 Edmonstone Road Unit Trust which are held as follows:

- (a) 1 unit held by Tesoriero Investment Group Pty Ltd ACN 161 088 115 as trustee of the Tesoriero Investment Trust (the beneficiaries of which are Giovanni Tesoriero, Caterina Tesoriero, Vincenzo Tesoriero and Teresa Tesoriero); and
- (b) 1 unit held by Eros Management Pty Ltd (In Liquidation) as trustee of the Eros Management Trust (the beneficiary of which is Basile Papadimitriou).

- 16 In respect of the Edmonstone Road Property, I am currently aware of the following competing claims (noting that the proceeds of sale have been used to satisfy La Trobe Financial's home loan and discharge its mortgage):

<b>Claimant</b>	<b>Nature of claim</b>	<b>Amount of claim</b>	<b>Security</b>
Westpac	Proprietary and damages claims	\$253,766,555	Caveat
WNZL	Proprietary and damages claims	NZD 44,097,969	N/A

<b>Claimant</b>	<b>Nature of claim</b>	<b>Amount of claim</b>	<b>Security</b>
FGFS	Intercompany loan	\$614,629	N/A

17 The Receivers have sold the Edmonstone Road Property, and hold the sale proceeds in accordance with the Orders, as referred to in paragraph 27 below.

### 5 Bulkara

18 5 Bulkara Street Pty Ltd ACN 630 982 160 (In Liquidation) in its capacity as trustee of the 5 Bulkara Street Unit Trust is the registered proprietor of 5 Bulkara. There are 10 units on issue for the 5 Bulkara Street Unit Trust which are held as follows:

- (a) 5 units held by Tesoriero Investment Group Pty Ltd ACN 161 088 115 as trustee of the Tesoriero Investment Trust (the beneficiaries of which are Giovanni Tesoriero, Caterina Tesoriero, Vincenzo Tesoriero and Teresa Tesoriero); and
- (b) 5 units held by Eros as trustee of the Maz Trust (the beneficiaries of which are Anthony Papadimitriou, Marcus Papadimitriou and Zachary Papadimitriou).

19 In respect of 5 Bulkara I am aware of the following competing claims to the property and/or the proceeds of sale:

<b>Claimant</b>	<b>Nature of claim</b>	<b>Amount of claim</b>	<b>Security</b>
NAB	Home loan	\$3,680,000	Real property mortgage
NAB	Guarantee claims	\$1,200,000 (estimated) (FG Facility) and \$2,800,000 (Tranche 2 of the JS Facility)	
Westpac	Proprietary and damages claims	\$253,766,555	Caveat
WNZL	Proprietary and damages claims	NZD 44,097,969	N/A
Aksara	Guarantee claims	Tranche 1: \$3,205,053 Tranche 2: \$2,272,278	Non-registered equitable mortgage
FGFS	Intercompany loan	\$3,712,002	N/A

20 I understand that NAB, through its appointed agent as mortgagee-in-possession, has sold 5 Bulkara, however settlement has not yet occurred.

**6 Bulkara**

21 6 Bulkara Street Pty Ltd ACN 639 734 473 (In Liquidation) as trustee of the 6 Bulkara Street Unit Trust is the registered proprietor of 6 Bulkara. There are 10 units on issue for the 6 Bulkara Street Unit Trust which are held as follows:

- (a) 5 units held by Tesoriero Investment Group Pty Ltd ACN 161 088 115 as trustee of the Tesoriero Investment Trust (the beneficiaries of which are Giovanni Tesoriero, Caterina Tesoriero, Vincenzo Tesoriero and Teresa Tesoriero); and
- (b) 5 units held by Vintes No. 4 Pty Ltd ACN 639 726 524 as trustee of the MAZ Trust No. 4 (the beneficiaries of which are Anthony Papadimitriou, Marcus Papadimitriou and Zachary Papadimitriou).

22 In respect of 6 Bulkara, I am currently aware of the following competing claims (noting that the proceeds of sale have been used to satisfy NAB's home loan):

<b>Claimant</b>	<b>Nature of claim</b>	<b>Amount of claim</b>	<b>Security</b>
Westpac	Proprietary and damages claims	\$253,766,555	Caveat
WNZL	Proprietary and damages claims	NZD 44,097,969	N/A
FGFS	Intercompany loan	\$4,944,239	N/A

23 The Receivers have sold 6 Bulkara, and hold the sale proceeds in accordance with the Orders, as referred to in paragraph 27 below.

**Other Claims**

24 I have also identified that:

- (a) Monies from (or on behalf of) SMBC Leasing and Finance Inc (ARBN 602 309 366) were paid (via FGFS) to acquire or maintain each of the Real Properties and 23 Margaret Street, Rozelle;
- (b) Monies from Societe Generale (ABN 71 092 516 286) were paid (via FGFS) to acquire or maintain each of the Real Properties (save for the James Street Properties) and 23 Margaret Street, Rozelle;
- (c) Monies from WNZL were paid (via FGFS) to acquire or maintain 23 Margaret Street, Rozelle; and
- (d) Monies from Westpac were paid (via FGFS) to acquire or maintain 23 Margaret Street, Rozelle.



**FGFS claim against 23 Margaret Street**

25 FGFS has issued a statutory demand to 23 Margaret Street Pty Limited in the amount of \$691,212.26. This is discussed further below at paragraph 28. As at the date of this affidavit, the amount owing by 23 Margaret Street Pty Limited to FGFS remains outstanding.

**Tesoriero Affidavit**

26 In response to paragraph 10 of the Tesoriero Affidavit, I refer to paragraphs 12 to 23 above.

27 In response to paragraph 16 of the Tesoriero Affidavit:

- (a) In respect of the Real Properties, the following amounts are currently being held by Allens in accordance with the Orders:
  - (i) \$9,808,169.94 on behalf of Jason Preston and Jason Ireland as receivers of 6 Bulkara; and
  - (ii) \$2,349,732.07 on behalf of Jason Preston and Jason Ireland as receivers of the Edmonstone Property.

28 In response to paragraphs 25 to 28 of the Tesoriero Affidavit:

- (a) On 9 December 2021:
  - (i) In my capacity as liquidator of 26 Edmonstone Road Pty Limited (In Liquidation) I caused a Creditor's Statutory Demand for Payment of a Debt to be issued to 286 Carlisle Street Pty Ltd (***Edmonstone Road Demand***);
  - (ii) In my capacity as liquidator of FGFS I caused a Creditor's Statutory Demand for Payment of a Debt to be issued to the following entities;
    - (A) 8-12 Natalia Ave Oakleigh Pty Ltd ACN 643 838 626;
    - (B) 9 Gregory Street Ouyen Pty Ltd ACN 641 392 707;
    - (C) 22 High Street Rushworth Pty Ltd ACN 641 392 903;
    - (D) 23 Margaret Street Pty Ltd ACN 623 715 373;
    - (E) 64-66 Berkley St Hawthorn Pty Ltd ACN 643 838 662;
    - (F) 193 Carlisle Street Enterprises Pty Ltd ACN 612 615 237;
    - (G) 286 Carlisle Street Pty Ltd ACN 610 042 343;
    - (H) Canner Investments Pty Ltd ACN 624 176 049; and
    - (I) Tesoriero Investment Group Pty Ltd ACN 161 088 115,

(together, the **FGFS Statutory Demands**).

- (b) On 24 December 2021:
  - (i) The recipient of the Edmonstone Road Demand filed an application seeking to set aside the Edmonstone Road Demand (**Edmonstone Road Set Aside Application**); and
  - (ii) The recipients of the FGFS Statutory Demands applied to set aside the FGFS Statutory Demands (**FGFS Set Aside Application**).
- (c) Following agreement by Edmonstone Road Pty Limited (In Liquidation) to withdraw the Edmonstone Road Demand, on 5 May 2022, orders were made with the consent of the parties to dismiss the Edmonstone Road Set Aside Application.
- (d) On 19 May 2022, the FGFS Set Aside Application was heard and dismissed with costs (the **Set Aside Judgment**).
- (e) On 24 May 2022, the recipients of the FGFS Statutory Demands sought a review of the Set Aside Judgment. This review has not yet been issued a return date.

29 In response to paragraphs 30 to 32 of the Tesoriero Affidavit:

- (a) Following my appointment as a Court appointed Receiver to the James Street Properties on 3 September 2021, I and those in my employ took steps to take vacant possession of the James Street Properties. This included, but is not limited to, the following steps:
  - (i) Issuing notices of termination to tenants in the James Street Properties;
  - (ii) Obtaining access to each of the James Street Properties by changing the keys and locks; and
  - (iii) Removing items located in the James Street Properties.
- (b) In respect of access to certain of the James Street Properties, being 14A James Street, in the period from February 2022 to early March 2022:
  - (i) On 7 February 2022, I became aware that a pile of timber had been purchased by Mr Tesoriero and directed to be placed in front of the entrance to 14A James Street. A photo of this obstruction is at page 9 of Exhibit JI-6. I caused Allens to correspond with Madgwicks regarding this issue and the timber was subsequently removed;
  - (ii) On 3 March 2022, I became aware that:

- (A) Two pallets of bricks and assorted timber had been placed in front of the entrance to 14A James Street. A photo of this obstruction is at page 10 of Exhibit JI-6; and
- (B) Mr Tesoriero had purchased the bricks and timber and directed that they be placed in front of the entrance to 14A James Street;
- (iii) I caused Allens to correspond to Madgwicks regarding this issue;
- (iv) On 7 March 2022:
  - (A) I became aware that the entrance to 14A James Street remained barricaded with the pallets of bricks and timber however a further structure of wood, corrugated iron and additional timber had been added to the tower obstructing the Receivers' access. A photo of this obstruction is at page 11 of Exhibit JI-6;
  - (B) I caused a forklift driver and locksmith to attend 14A James Street to remove the obstruction and change the locks and for a member of my staff, Allan Stonehouse, to attend the site to supervise the works; and
  - (C) I am informed by Mr Stonehouse and believe that Mr Tesoriero appeared on site during the removal of the obstruction and changing of the locks and, among other things, asserted ownership to certain items which remained in the warehouse.
- (v) On 21 March 2022:
  - (A) I became aware that numerous vehicles from a neighbouring business, Ming Repairs Mechanic and Bodywork (**Ming Repairs**) had been parked in front of 14A and 16 James Street. Photos of this obstruction is at pages 12 to 16 of Exhibit JI-6;
  - (B) I am informed by the project manager engaged by the Receivers with respect to the properties and believe that Ming Repairs had parked the vehicles in front of the properties at Mr Tesoriero's instruction;
  - (C) I am informed by the project manager that the vehicles were removed at their request; and
  - (D) I caused Allens to correspond with Madgwicks regarding this issue.

- (c) Upon obtaining access to 14A James Street, I became aware that a large number of items remained in the warehouse. A photo of the assorted items is at page 17 of Exhibit JI-6. To ensure that the items were returned to their proper owner:
- (i) On 16 March 2022, I caused Allens to write to Madgwicks requesting that Mr Tesoriero provide proof of ownership of the items stored in 14A James Street;
  - (ii) Following this letter, from 21 March 2022 to 22 April 2022 Allens wrote to Madgwicks on five occasions repeating the Receivers' request that Mr Tesoriero detail which of the items stored in 14A James Street he asserted ownership to;
  - (iii) On 26 March 2022, as no information as to Mr Tesoriero's claim was forthcoming and the James Street Properties were likely to sell in the coming week, I caused the items in 14A James Street to be removed and stored in a storage facility;
  - (iv) On 1 April 2022, I caused the photo at page 17 of Exhibit JI-6 to be provided to Mr Tesoriero to identify which of the contents he claimed ownership to. On 8 April 2022, I caused an inventory list of the items which were removed from 14A James Street to be provided to Mr Tesoriero to assist him in identifying the items he claimed ownership to;
  - (v) On 2 and 6 May 2022, Madgwicks provided Allens statutory declarations of Mr Tesoriero, Giovanni Tesoriero (Mr Tesoriero's father) and Danny Seamann (who was the tenant of 14A James Street) regarding ownership of the items removed from 14A James Street. The effect of those statutory declarations was that any contents in 14A James Street which belonged to Mr Seamann had been gifted to Giovanni Tesoriero and Mr Tesoriero no longer asserted any claim to the items; and
  - (vi) From 9 May 2022 to 9 June 2022, Allens and Madgwicks exchanged further correspondence regarding delivery of the items and between 10 and 22 June 2022 the items were progressively delivered to Giovanni Tesoriero.

30 In response to paragraph 33 of the Tesoriero Affidavit:

- (a) In respect of the 6 Bulkara Property:
  - (i) On 15 November 2021, Mr Tesoriero asserted ownership to certain items which were located in 6 Bulkara at the time the Receivers took possession;

- (ii) Since 26 October 2021, Allens wrote to Madgwicks on at least eight occasions requesting that Mr Tesoriero provide details and evidence of his claim that certain of the contents of 6 Bulkara are his personal belongings and offering to arrange for an inspection of 6 Bulkara to assist in that process. I also caused an inventory list to be prepared and provided to Mr Tesoriero to assist him in identifying the items he claimed ownership to;
  - (iii) On or around 11 February 2022, as no information as to Mr Tesoriero's claim was forthcoming and 6 Bulkara was in the process of being sold, I caused the items in 6 Bulkara which were of a personal nature (including, golf clubs and an iMac) to be removed and stored in a storage facility;
  - (iv) On 11 February 2022, 6 Bulkara was sold together with various pieces of furniture and other items which were contained in 6 Bulkara. These items were the property of 6 Bulkara Street Pty Limited (In Liquidation) (being property it purchased around the time of the purchase of 6 Bulkara) and did not consist of any of the "Personal Items" which had been removed; and
  - (v) As at the date of this affidavit, Mr Tesoriero has not provided any evidence demonstrating ownership of the Personal items.
- (b) In respect of 5 Bulkara:
- (i) On 15 November 2021, Mr Tesoriero asserted ownership to certain items which were located in 5 Bulkara at the time the Receivers took possession;
  - (ii) Since 26 October 2021, Allens have written to Madgwicks on at least eleven occasions requesting that Mr Tesoriero provide details and evidence (including by way of statutory declaration) of his asserted claim of ownership over the items (including the specific items which were captured by such claim) and offering to arrange for an inspection of 5 Bulkara;
  - (iii) On around 9 March 2022, as no information as to Mr Tesoriero's claim was forthcoming and 5 Bulkara was in the process of being sold, I caused an inventory list of all the items contained in 5 Bulkara to be prepared and provided to Mr Tesoriero to assist him in identifying the items he claimed ownership to. Items listed on the inventory list were categorised as either "Rental Items" (such as furnishings and other household goods which

appeared to have been contained in 5 Bulkara for the purposes of renting 5 Bulkara) or "Personal Items";

- (iv) Following receipt of a letter from Madgwicks on 9 June 2022, I caused to be undertaken further searches of the books and records of entities related to 5 Bulkara Street Pty Ltd (In Liquidation), including, the books and records of FGFS which leased 5 Bulkara prior to my appointment as Receiver. As a consequence of these searches I became aware that, save for certain items of clothing and shoes, a number of the items previously categorised as Personal Items were purchased by FGFS and therefore constituted Rental Items;
- (v) On 13 April 2022, NAB appointed its agent as mortgagee-in-possession of 5 Bulkara (**AMIP**);
- (vi) On 17 June 2022:
  - (A) The AMIP exchanged a contract of sale for 5 Bulkara (that sale has not yet settled); and
  - (B) I, in my capacity as liquidator of FGFS, caused the sale of certain furniture and other items which were contained in 5 Bulkara. These items were the property of FGFS and did not consist of any of the "Personal Items" referred to in paragraph 30(b)(iv) above;
- (vii) As at the date of this affidavit, Mr Tesoriero has not provided any evidence demonstrating ownership of any of the "Personal Items".
- (c) In response to paragraph 42 of the Tesoriero Affidavit:
  - (i) Dentons are the solicitors for NAB (not the Receivers); and
  - (ii) It is my understanding that the payment of the remaining proceeds in the manner suggested by Mr Tesoriero would be inconsistent with the power granted to the Receivers by the Court, pursuant to the Orders.

Affirmed by the deponent  
at Sydney  
in New South Wales  
on 28 June 2022  
Before me:

)  
)  
)  
)  
)

*Jason Ireland*  
Signature of deponent

*[Handwritten Signature]*

Signature of witness

No. NSD 616 of 2021

Federal Court of Australia  
District Registry: New South Wales  
Division: General

**Westpac Banking Corporation ABN 33 007 457 141 and another named in the Schedule**  
Applicant

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

Affidavit of: **Jason Ireland**  
Address: Level 12, 20 Martin Place, Sydney NSW 2000  
Occupation: Registered Liquidator  
Date: 28 June 2022

**EXHIBIT CERTIFICATE**

This is the exhibit marked "**JI-6**" produced and shown to Jason Ireland at the time of affirming his affidavit this 28 June 2022.

Before me:



.....  
Signature of witness

Federal Court of Australia  
District Registry: New South Wales  
Division: General



No: NSD747/2021

**THE FORUM GROUP OF COMPANIES PTY LIMITED (ADMINISTRATORS APPOINTED)** and others named in the schedule  
Plaintiff

**ORDER**

**JUDGE:** JUSTICE LEE

**DATE OF ORDER:** 03 September 2021

**WHERE MADE:** Sydney

**THE COURT ORDERS THAT:**

Real property

1. Pursuant to s 57 of the *Federal Court of Australia Act 1976* (Cth), Jason Ireland and Jason Preston of McGrathNicol, Level 12, 20 Martin Place Sydney in the State of New South Wales be appointed as receivers and managers (**Receivers**) of the properties listed in items 1 to 4 of Annexure A to these Orders (**Real Properties**) and any sale proceeds or income of those Real Properties.
2. The Receivers be authorised to take possession of, preserve, maintain and sell the Real Properties.
3. The Receivers have the power to do, in Australia and elsewhere, all things necessary or convenient to be done for or in connexion with, or as incidental to achieving the objective set out in Order 2, including without limitation, the power to:
  - (a) Enter into possession of, preserve, maintain and sell the Real Properties;
  - (b) To dispose of the Real Properties;
  - (c) To insure the Real Properties;
  - (d) To appoint a solicitor or other professionally qualified person to assist the Receivers in connexion with their appointment in respect of the Real Properties;





- (e) To appoint an agent to conduct the sale and do any business that the Receivers are unable to do or that it is unreasonable to expect the Receivers to do personally in respect of the Real Properties;
  - (f) Pay any outgoings or collect any rent in connexion with the Real Properties;
  - (g) Sign any documents on behalf of the Company in furtherance of the objective set out in Order 2;
  - (h) Pay the costs, expenses and remuneration of the Receivers in acting as Receivers of the assets from the sale proceeds or income of the Real Properties referable to those costs; and
  - (i) Pay the balance into a controlled monies account held by Allens.
4. The need for the Receivers to file a guarantee under r 14.21 and r 14.22 of the *Federal Court Rules 2011* (Cth) in respect of their appointment under order 1 be dispensed with.

XOXO Yacht

5. Pursuant to s 57 of the *Federal Court of Australia Act 1976* (Cth), Jason Ireland and Jason Preston of McGrathNicol, Level 12, 20 Martin Place Sydney in the state of New South Wales be appointed as receivers and managers (**Receivers**) over the property listed in item 5 of Annexure A to these Orders (**XOXO Yacht**).
6. The Receivers be authorised to take possession of, preserve, maintain and sell the XOXO Yacht.
7. The Receivers have the power to do, in Australia and elsewhere, all things necessary or convenient to be done for or in connexion with, or as incidental to achieving the objective set out in order 6, including without limitation:
- (a) Take possession of, preserve, maintain and sell the XOXO Yacht;
  - (b) To dispose of the XOXO Yacht;
  - (c) To insure the XOXO Yacht;



- (d) To appoint a solicitor or other professionally qualified person to assist the Receivers in connexion with their appointment in respect of the XOXO Yacht;
  - (e) To appoint an agent to conduct the sale and to do any business that the Receivers are unable to do or that it is unreasonable to expect the Receivers to do personally in respect of the XOXO Yacht;
  - (f) Pay any outgoings or collect any rent in connexion with the XOXO Yacht; and
  - (g) Sign any documents on behalf of the Company in furtherance of the objective set out in Order 6;
  - (h) Pay the costs, expenses and remuneration of the Receivers in acting as Receivers of the assets from the sale proceeds or income of the XOXO Yacht; and
  - (i) Pay the balance into a controlled monies account held by Allens.
8. The need for the Receivers to file a guarantee under r 14.21 and r 14.22 of the *Federal Court Rules 2011* (Cth) in respect of their appointment under order 5 be dispensed with.

Miscellaneous

- 9. The applicants costs of this application be paid out of the sale proceeds or income of the Real Properties and XOXO Yacht.
- 10. Liberty be granted to any person affected by these orders, including any creditor of the applicants or the Trusts or any beneficiary of the Trusts to apply to vary or set aside these orders on 7 business days' notice to the applicants and to the Court by sending an email to [Associate.LeeJ@fedcourt.gov.au](mailto:Associate.LeeJ@fedcourt.gov.au).
- 11. Liberty be granted to the applicants to apply to the Court for orders discharging and releasing the Receivers on 7 business days' notice by sending an email to [Associate.LeeJ@fedcourt.gov.au](mailto:Associate.LeeJ@fedcourt.gov.au).

**THE COURT NOTES:**

- 12. The appointment of the Receivers of the Real Properties does not affect any rights of a mortgagee of a Real Properties.



13. Without admission by any party the agreement of Westpac Banking Corporation and the Receivers that the appointment of the Receivers of the properties listed in items 1 to 5 of Annexure A to these Orders for the purposes of sale (**Properties**) does not in any way affect:
- (a) Any rights of the current registered proprietor or beneficial owner of the properties or the Unit Holders or beneficiaries in any Trust which is the beneficial owner of any of the Properties that they may have to the proceeds of sale of any property;
  - (b) The right of Vincenzo Frank Tesoriero (or a related entity of Mr Tesoriero) to apply to the Court to have any part of any proceeds of sale received from the sale of the properties released from the freezing orders made by the Court on 2 July 2021 (as varied on 9 July 2021 and 37 August 2021) (**Freezing Orders**) for the purpose of the payment of his living expenses and/or legal costs in such an amount as is approved by the Court;
  - (c) The right of Vincenzo Frank Tesoriero or any other person to exercise any right that they may have pursuant to any trust deed or as a beneficiary of any trust or as a director or shareholder of any company to facilitate payment out from the proceeds of sale of any property any amounts referred to in (b) above that are approved for payment out by the Court; or
  - (d) The right of Vincenzo Frank Tesoriero or any party affected by the Freezing Orders to apply to vary or discharge the Freezing Orders.

Date that entry is stamped: 3 September 2021

*Sia Lagos*  
Registrar



### Annexure A

Item	Party	Property (including the contents of that property to the extent it is owned by the 'Party' included in the second column)
1	Properties held by 14 James Street Pty Limited (In Liquidation) as trustee of the 14 James Street Unit Trust	16 James St Clayton South VIC 3169 Vol: 12170 Folio: 467
		Warehouse 1, 9 Parsons St, Clayton South VIC 3169 Vol: 12170 Folio: 465
		Warehouse 2, 9 Parsons St, Clayton Sth VIC 3169 Vol: 12170 Folio: 468
		Warehouse 3, 9 Parsons St, Clayton Sth VIC 3169 Vol: 12170 Folio: 469
		10 James Street, Clayton South, VIC 3169 Vol: 12170 Folio: 472
		12 James Street, Clayton South VIC 3169 Vol: 12170 Folio: 471
		14 James Street, Clayton South VIC 3169 Vol: 12170 Folio: 470
		18 James Street, Clayton South VIC 3169 Vol: 12170 Folio: 466
		8 Olive Street, Clayton South VIC 3169 Vol: 12170 Folio: 474
		2
3	Property held by 5 Bulkara Street Pty Ltd (In Liquidation) as trustee of the 5 Bulkara Street Unit Trust	5 Bulkara Street Wagstaffe NSW 2257 Folio: 2/1141260
4	Property held by 6 Bulkara Street Pty Ltd (In Liquidation) as trustee of the 6 Bulkara Street Unit Trust	6 Bulkara Street Wagstaffe, NSW 2257 Folio: 3/1141260



5	Property formerly owned by Intrashield Pty Limited (In Liquidation)	"XOXO" Motor Yacht Cayman Islands Official Number 734587
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### Schedule

No: NSD747/2021

Federal Court of Australia  
District Registry: New South Wales  
Division: General

Applicant	JASON PRESTON
Applicant	JASON IRELAND
Second Plaintiff	14 JAMES STREET PTY LTD ACN 638 449 206 (ADMINISTRATORS APPOINTED)
Third Plaintiff	26 EDMONSTONE ROAD PTY LTD ACN 622 944 129 (ADMINISTRATORS APPOINTED)
Fourth Plaintiff	5 BULKARA STREET PTY LTD ACN 630 982 160 (ADMINISTRATORS APPOINTED)
Fifth Plaintiff	6 BULKARA STREET PTY LTD ACN 639 734 473 (ADMINISTRATORS APPOINTED)
Sixth Plaintiff	ARAMIA HOLDINGS PTY LTD ACN 114 958 717 (ADMINISTRATORS APPOINTED)
Seventh Plaintiff	EROS MANAGEMENT PTY LTD ACN 622 298 346 (ADMINISTRATORS APPOINTED)
Eighth Plaintiff	FORUM DIRECT PTY LTD ACN 054 890 710 (ADMINISTRATORS APPOINTED)
Ninth Plaintiff	FORUM FLEET PTY LIMITED ACN 155 440 994 (ADMINISTRATORS APPOINTED)
Tenth Plaintiff	FORUM GROUP PTY LTD ACN 153 336 997 (ADMINISTRATORS APPOINTED)
Eleventh Plaintiff	FORUM GROUP (QLD) PTY LTD ACN 103 609 678 (ADMINISTRATORS APPOINTED)
Twelfth Plaintiff	FORUM GROUP (VIC) PTY LTD ACN 153 062 018 (ADMINISTRATORS APPOINTED)
Thirteenth Plaintiff	IMAGETEC FINANCIAL SERVICES PTY LTD ACN 111 978 182 (ADMINISTRATORS APPOINTED)



Fourteenth Plaintiff	IMAGETEC SOLUTIONS AUSTRALIA PTY LTD ACN 074 715 718 (ADMINISTRATORS APPOINTED)
Fifteenth Plaintiff	INTRASHIELD INVESTMENT GROUP PTY LTD ACN 645 578 829 (ADMINISTRATORS APPOINTED)
Sixteenth Plaintiff	INTRASHIELD PTY LTD ACN 133 426 534 (ADMINISTRATORS APPOINTED)
Seventeenth Plaintiff	IUGIS INVESTMENTS PTY LTD ACN 647 627 745 (ADMINISTRATORS APPOINTED)
Eighteenth Plaintiff	IUGIS PTY LTD ACN 632 882 243 (ADMINISTRATORS APPOINTED)
Nineteenth Plaintiff	IUGIS WASTE SOLUTIONS PTY LTD ACN 647 212 299 (ADMINISTRATORS APPOINTED)
Twentieth Plaintiff	ONESOURCE AUSTRALIA HOLDINGS PTY LIMITED ACN 120 463 541 (ADMINISTRATORS APPOINTED)
Twenty First Plaintiff	ORCA ENVIRO SOLUTIONS PTY LTD ACN 626 552 645 (ADMINISTRATORS APPOINTED)
Twenty Second Plaintiff	ORCA ENVIRO SYSTEMS PTY LTD ACN 627 597 782 (ADMINISTRATORS APPOINTED)
Twenty Third Plaintiff	SMARTPRINT FLEET MANAGEMENT PTY LTD ACN 132 807 080 (ADMINISTRATORS APPOINTED)
Twenty Fourth Plaintiff	SPARTAN CONSULTING GROUP PTY LTD ACN 168 989 544 (ADMINISTRATORS APPOINTED)
Twenty Fifth Plaintiff	FORUM FINANCE PTY LTD ACN 153 301 172 (IN LIQUIDATION)
Twenty Sixth Plaintiff	FORUM GROUP FINANCIAL SERVICES PTY LTD ACN 623 033 705 (PROVISIONAL LIQUIDATORS APPOINTED)
Twenty Seventh Plaintiff	FORUM ENVIRO PTY LTD ACN 168 709 840 (PROVISIONAL LIQUIDATORS APPOINTED)
Twenty Eighth Plaintiff	FORUM ENVIRO (AUST) PTY LTD ACN 607 484 364 (PROVISIONAL LIQUIDATORS APPOINTED)



















