

NOTICE OF FILING

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Details of Filing

Document Lodged: Affidavit - Form 59 - Rule 29.02(1)
File Number: NSD747/2021
File Title: IN THE MATTER OF THE FORUM GROUP OF COMPANIES PTY LIMITED ACN 151 964 626 (ADMINISTRATORS APPOINTED) & ORS
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



A handwritten signature in blue ink that reads 'Sia Lagos'.

Dated: 7/02/2022 8:29:02 PM AEDT

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. NSD747 of 2021

Federal Court of Australia
District Registry: NSW
Division: General

IN THE MATTER OF THE FORUM GROUP OF COMPANIES PTY LIMITED ACN 151 964 626 (IN LIQUIDATION)

14 James Street Pty Ltd ACN 638 449 206 (In Liquidation) and others
Plaintiffs

Affidavit of: **Jason Ireland**
Address: Level 12, 20 Martin Place, Sydney NSW 2000
Occupation: Registered Liquidator
Date: 7 February 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 to Twenty-Fifth Plaintiffs (**Liquidators**).
- 2 I refer to:
 - (a) My earlier affidavit affirmed on 28 August 2021 (**Earlier Affidavit**);
 - (b) The affidavit of Sarwar (Sazz) Nasimi sworn on 3 February 2022 (**Nasimi Affidavit**); and

Filed on behalf of (name & role of party)	Jason Preston and Jason Ireland in their capacity as receivers and managers		
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		
Address for service (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		

(c) The affidavit of Melissa Passarelli sworn on 6 February 2022 (***Passarelli Affidavit***).

- 3 I make this affidavit in relation to the Interlocutory Application dated 4 February 2022 filed on behalf of Vincenzo Frank Tesoriero (***Application***) seeking orders to prevent the sale of various properties.
- 4 Exhibited to me at the time of affirming this affidavit is an electronic bundle of documents marked 'Exhibit JI-4'. Where I refer to a document by page number noting Exhibit JI-4, I am referring to the corresponding page number in Exhibit JI-4.

Current status of the Properties

5 The Application relates to the following properties:

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 (<i>James Street Properties</i>)	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: 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	Property held by 5 Bulkara Street Pty Ltd (In Liquidation) as trustee of the 5 Bulkara Street Unit Trust (<i>5 Bulkara</i>)	5 Bulkara Street, Wagstaffe NSW 2257 Folio: 2/1141260

Item	Party	Property (including the contents of that property to the extent it is owned by the 'Party' included in the second column)
3	Property held by 6 Bulkara Street Pty Ltd (In Liquidation) as trustee of the 6 Bulkara Street Unit Trust (6 Bulkara)	6 Bulkara Street, Wagstaffe, NSW 2257 Folio: 3/1141260
4	Property formerly owned by Intrashield Pty Limited (In Liquidation) (XOXO Yacht)	"XOXO" Motor Yacht Cayman Islands Official Number 734587

6 The properties listed above are collectively referred to in this affidavit as the **Properties** and items 1-4 are collectively referred to in this affidavit as the **Real Properties**.

7 On 3 September 2021, I, together with Jason Preston, was appointed a receiver and manager of the Properties (**Receivers**).

8 I refer to paragraphs 11, 24 and 30 of my Earlier Affidavit. As set out in those paragraphs, each of the Real Properties are subject to:

- (a) A registered mortgage in favour of National Australia Bank (**NAB**);
- (b) A caveat lodged by Aksara Holdings Pty Ltd (**Aksara**), save for 6 Bulkara Street; and
- (c) A caveat lodged by Westpac Banking Corporation (**Westpac**).

9 As at the date of this affidavit, these dealings remain on title of the Real Properties:

- (a) At pages 1 to 20 of Exhibit JI-4 is a copy of a current and historical extract for 14 James Street;
- (b) At pages 21 to 22 of Exhibit JI-4 is a copy of a current and historical extract for 5 Bulkara Street; and
- (c) At pages 23 to 24 of Exhibit JI-4 is a copy of a current and historical extract for 6 Bulkara Street.

10 The mortgages in favour of NAB secure:

- (a) Home loans that NAB has provided in relation to 5 Bulkara Street (approximately \$3,680,000), 6 Bulkara Street (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); and

- (b) Amounts owed by 5 Bulkara in respect of guarantees that it has provided in favour of NAB. 5 Bulkara has guaranteed:
- (i) the amounts owed by Forum Group Pty Limited to NAB (which I understand to be in the order of \$1.2m once fees and costs are included); and
 - (ii) one tranche of funding provided under the business banking facility in respect of the 14 James Street Unit Trust for \$2,800,000.

(together, the **NAB Debt**).

11 The total NAB Debt as at today's date is approximately \$13,846,150.26.

12 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) 5 Bulkara Street, which secures two tranches of a vendor finance facility provided by Aksara to various companies controlled by Mr Tesoriero for the acquisition of petrol station properties located in Victoria. 5 Bulkara Street Pty Ltd (In Liquidation) guaranteed these facilities. At pages 25 to 125 of Exhibit JI-4 are copies of the vendor finance deeds of loan for these tranches of finance; and
- (b) the James Street Properties secures a third tranche of the vendor finance facility provided by Aksara to 9 Gregory Street Ouyen Pty Ltd and 22 High Street Rushworth, companies associated with Mr Tesoriero for the acquisition of petrol station properties located in Victoria. 14 James Street Pty Ltd (In Liquidation) guaranteed this facility. At pages 126 to 173 of Exhibit JI-4 are copies of vendor finance deed of loan for this tranche of finance;

(these facilities collectively referred to as the **Aksara Debt**).

13 The total Aksara Debt is as follows:

- (a) Tranche 1 (guaranteed by 5 Bulkara): approximately \$3,205,052.83;
- (b) Tranche 2 (guaranteed by 5 Bulkara): approximately \$2,272,277.50; and
- (c) Tranche 3 (guaranteed by 14 James Street Pty Limited): approximately \$315,000.00.

14 The caveat lodged by Westpac relates to its proprietary claim in NSD 616 of 2021 against the registered proprietor of each of the Properties. In that regard, each of the Properties was purchased in part using funds from Forum Group Financial Services Pty Limited (in liquidation) (**FGFS**). The books and records of FGFS show that it has provided the following unsecured loans to:

- (a) 5 Bulkara Street Pty Ltd (In Liquidation): approximately \$3,712,011.85;
- (b) 6 Bulkara Street Pty Ltd (In Liquidation): approximately \$4,944,239.06;
- (c) 14 James Street Pty Ltd (In Liquidation): approximately \$2,838,193.39; and
- (d) Intrashield Pty Ltd (In Liquidation): approximately \$1,283,130.10.

FGFS typically obtained its funds from Westpac and SMBC Leasing and Finance, Inc.

- 15 On 6 December 2021, NAB served default notices on the registered proprietors of the Real Properties in reliance on payment defaults of the facilities provided to 5 and 6 Bulkara described at paragraph 10(a) above (**NAB Default Notices**). The NAB Default Notices demand repayment of the full amount of the debt owing under the facilities. At pages 174 to 180 of Exhibit JI-4, is a copy of the NAB Default Notices.

Sale of the Properties

- 16 Since my appointment as a Receiver, I have caused various tasks to be undertaken to sell each of the Properties.

14 James Street Properties

- 17 Since my appointment as a Receiver, I have caused the following steps to be undertaken in respect of the 14 James Street Properties (consisting of nine commercial premises):
- (a) On 25 October 2021, I caused Sutherland Farrelly to be instructed to perform valuations of the 14 James Street Properties. This valuation was received on 19 November 2021;
 - (b) On 23 September 2021, I caused requests for proposals to be issued to three selling agents by which each prospective selling agent was provided the opportunity to present their proposal for the sale of the 14 James Street Properties;
 - (c) On or around 20 October 2021, I selected Cushman & Wakefield (**C&W**) as the preferred selling agent. It was recommended by C&W that the 14 James Street Properties be marketed for sale by an 'expressions of interest' campaign;
 - (d) On 29 December 2021, I caused Notices to Vacate to be served on two tenants; and
 - (e) On 10 September 2021, I commissioned an Occupational, Health and Safety review to be undertaken and have taken steps to rectify issues identified through that review. By way of example, I caused roof repairs to be performed to prevent water damage.

- 18 The marketing campaign for the 14 James Street Properties is scheduled to commence in or around early March 2022.

5 and 6 Bulkara Street, Wagstaffe NSW

- 19 The properties located at 5 and 6 Bulkara Street, Wagstaffe NSW (together, the ***Bulkara Properties***) are luxury residential premises formerly leased by Mr Papas as short term vacation rentals.
- 20 Since my appointment as a Receiver, I have caused steps the following steps to be undertaken in respect of the Bulkara Properties:
- (a) In respect of both the Bulkara Properties:
- (i) On 11 October 2021, I caused Keen Property to be instructed to perform valuations of the Bulkara Properties. This valuation was received on 9 December 2021;
 - (ii) On 23 September 2021, I caused requests for proposals to be issued to three selling agents by which each prospective selling agent was provided the opportunity to present their proposal for the sale of the Bulkara Properties;
 - (iii) Belle Property was selected as the preferred selling agent who recommended that the Bulkara Properties be marketed for sale by an 'expressions of interest' campaign; and
 - (iv) I have had, and have caused to have, various discussions with NAB and Aksara regarding the sale of the Bulkara Properties;
- (b) In respect of 5 Bulkara Street:
- (i) As the sale price is unlikely to be sufficient to discharge all the amounts owed by 5 Bulkara (given the guarantees it has provided) and I am unable to sell through the caveats without the consent of the caveators, I am in the process of negotiating an arrangement with each of the parties which have secured or proprietary claims in respect of that property which would allow the sale to proceed;
 - (ii) I have caused disclaimers to be issued to terminate the leases held by Forum Group Financial Services Pty Ltd (In Liquidation) and Forum Group Pty Limited (In Liquidation) (both being entities of which the Receivers are appointed as Liquidators);
 - (iii) The marketing campaign for 5 Bulkara is expected to commence on or around mid-February 2022;

- (c) In respect of 6 Bulkara Street:
- (i) I have caused formal marketing material to be prepared, including advertisements with REA Group and Doman; and
 - (ii) On or around 3 January 2022, I caused Belle Property to make contact with their customer database notifying them of the forthcoming sale of 6 Bulkara Street, resulting in a number of private inspections on 6 January 2022;
 - (iii) I caused the marketing campaign to launch on 14 January 2022 with expressions of interest to close at 5pm on 7 February. I am informed by Belle Property that as at 28 January 2022, 25 individual private inspections have been arranged, 13 parties have requested the contract for sale and one offer has been received.

XOXO Yacht

- 21 Since my appointment as a Receiver, I have caused the following steps to be undertaken in respect of XOXO Yacht:
- (a) On 3 September 2021, I caused Lloyds Auctioneers and Valuers (**Lloyds**) to be engaged to assist with securing, preserving and realising the XOXO Yacht. I understand that Lloyds engaged Barclay Tuck Yachts to assist with this process;
 - (b) On or around 13 September 2021, I was advised by Lloyds that the XOXO Yacht was not operational or able to move under its own power and as such was required to be towed;
 - (c) On 1 October 2021, I caused the XOXO Yacht to be towed from its pre-appointment location behind a private residence in North Miami Beach, Florida, USA to a secure location where the state of the XOXO Yacht could be assessed;
 - (d) From 8 to 14 October 2021, I authorised essential maintenance and repair works to be carried out in accordance with a quotation I received from Liquid Blue Yacht Services Inc. These works included undertaking basic cleaning, replacement of the battery and other minor cosmetic repairs to prevent further serious deterioration of the XOXO Yacht's condition and allow for its presentation to buyers;
 - (e) On 2 November 2021, I received from Lloyds a further quotation from Liquid Blue Yacht Services Inc. for comprehensive repair works required to return the XOXO Yacht to a fully functioning and seaworthy condition. The quotation outlined that extensive repairs would need to be undertaken to return the XOXO Yacht to its original state and included repairs to its essential operations such as the engine

as well as to its more superficial functions commonly included on luxury yachts of this type such as replacement of the jacuzzi. Due to the extensive nature of these repairs the cost to complete these works exceeded USD 850,000.

- (f) On 11 November 2021, I received from Lloyds a marine survey report from Florida Boat & Yacht Surveyors which:
 - (i) Confirmed the current state of the XOXO Yacht; and
 - (ii) Provided a second opinion on the works required to return the vessel to an operational and presentable condition. The results of this survey detailed a substantive list of repairs which Lloyds estimated would cost between USD 300,000 and USD 500,000 to complete (depending on the extent of repairs undertaken).
- (g) On 16 November 2021, I was advised by Lloyds that if the Receivers intended to complete the necessary repairs, it would take some months to complete these repairs;
- (h) Having considered the advice of Lloyds regarding the substantial cost and time to undertake the repairs (including the additional holding costs which would be required to be paid during this time), I formed the view that it would be more cost effective and in the best interests of creditors to sell the XOXO Yacht as is;
- (i) On 9 December 2021 I requested from Lloyds a formal sales proposal and third-party market valuation (on an as-is basis); and
- (j) On 28 January 2022, the Receivers appointed Lloyds to act as motor dealer and chattel auctioneer for the sale of the XOXO Yacht and to commence the sales process of the XOXO Yacht.

Correspondence with Mr Tesoriero since my appointment as Receiver

22 Following my appointment as a Receiver, the following correspondence has been exchanged either directly between the Receivers and Mr Tesoriero or between my solicitors (Allens) and Mr Tesoriero's lawyers (formerly Fortis Law and now Madgwicks):

- (a) At pages 181 to 201 of Exhibit JI-4 is an email chain between McGrathNicol to Fortis Law dated 6-7 September 2021 which enclosed a list of the contents of each of the Properties (**Contents Letter**);
- (b) At page 202 of Exhibit JI-4 is a letter from Allens to Fortis Law dated 15 September 2021 regarding the sale of XOXO Yacht (**XOXO Letter**);

- (c) At pages 203 to 204 of Exhibit JI-4 is a letter from Allens to Madgwicks dated 15 October 2021 regarding the sale of the 14 James Street Properties and Bulkara Properties;
- (d) At page 205 to 219 of Exhibit JI-4 is a letter from Allens to Madgwicks dated 26 October 2021 regarding the Contents Letter;
- (e) At page 220 of Exhibit JI-4 is an email from Allens to Madgwicks dated 15 November 2021 regarding the Contents Letter;
- (f) At page 221 of Exhibit JI-4 is an email from Madgwicks to Allens dated 15 November 2021 regarding the Contents Letter;
- (g) At page 224 of Exhibit JI-4 is an email from Allens to Madgwicks dated 22 November 2021 regarding the Contents Letter;
- (h) At page 227 of Exhibit JI-4 is a letter from Madgwicks to Allens dated 26 November 2021 regarding the XOXO Letter;
- (i) At page 228 of Exhibit JI-4 is a letter from Allens to Madgwicks dated 29 November 2021 regarding the XOXO Yacht;
- (j) At page 269 of Exhibit JI-4 is an email from Madgwicks to Allens dated 3 December 2021 regarding the XOXO Letter;
- (k) At page 271 of Exhibit JI-4 is a letter from Allens to Madgwicks dated 8 December 2021 regarding the XOXO Letter;
- (l) At page 272 of Exhibit JI-4 is an email from Allens to Madgwicks dated 10 December 2021 regarding Contents Letter;
- (m) At page 275 of Exhibit JI-4 is an email from Madgwicks to Allens dated 14 December 2021 regarding the Contents Letter;
- (n) At page 279 of Exhibit JI-4 is a letter from Allens to Madgwicks dated 20 December 2021 regarding the Contents Letter;
- (o) At page 281 Exhibit JI-4 is a letter from Madgwicks to Allens dated 23 December 2021 regarding the sale of the Edmonstone Property (**Edmonstone Letter**);
- (p) At page 283 Exhibit JI-4 is a letter from Madgwicks to Allens dated 23 December 2021 regarding the sale of the Properties (**Sale Letter**);
- (q) At page 286 of Exhibit JI-4 is a letter from Allens to Madgwicks dated 23 December 2021 in response to the Edmonstone Letter;
- (r) At page 288 of Exhibit JI-4 is a letter from Allens to Madgwicks dated 23 December 2021 in response to the Sale Letter;

- (s) At page 291 of Exhibit IJ-4 is a letter from Madgwicks to Allens dated 19 January 2022 responding to Allens' letter dated 23 December 2021 in response to the Sale Letter; and
- (t) At page 293 of Exhibit IJ-4 is a letter from Allens to Madgwicks dated 24 January 2022 in response to Madgwicks' letter dated 19 January 2022.

Nasimi Affidavit

Paragraphs 12 to 15

23 In addition to the correspondence set out in paragraphs 12 to 15 of the Nasimi Affidavit, between 2 to 3 September 2021, Allens and Fortis Law engaged in further correspondence regarding the form of orders appointing the receivers. At pages 295 to 299 of Exhibit JI-4 is a copy of this email chain.

Paragraphs 19 to 22

24 Since my appointment as a Receiver, I have caused the following steps to be undertaken in respect of the property at 26 Edmonstone Road, Bowen Hills QLD (**26 Edmonstone Road**):

- (a) 26 Edmonstone Road was the former office of Forum Group Pty Limited (In Liquidation). The receivers of Forum Group (Antony Resnick and Mark Julian Robinson of dVt Group) elected to abandon the residual assets remaining at the premises. I caused the premises to be cleaned-up in preparation for a sale campaign;
- (b) On 25 October 2021, I caused Crisp Valuation Services to perform a valuation of 26 Edmonstone Road. This valuation was received on 12 November 2021 and valued 26 Edmonstone Road at \$3.65 million;
- (c) On 23 September 2021, I caused requests for proposals to be issued to three selling agents by which each prospective selling agent was provided the opportunity to present their proposal for the sale of 26 Edmonstone Road;
- (d) On 20 October 2021, I selected Jones Lang LaSalle (**JLL**) as the preferred selling agent. The public marketing campaign commenced on 3 November 2021. I am informed by JLL that as part of the marketing campaign, 61 individual direct enquires were received and 11 buyer groups considered genuine by JLL actively reviewed the data room/contract.
- (e) I caused an auction to be held on 1 December 2021 with a reserve set at \$3.65m (being the valuation price). I am informed by JLL that 14 registered bidders attended the auction of which 6 placed a bid. 26 Edmonstone Road sold at auction for \$4,325,000. Settlement occurred on 31 January 2022. In accordance

with the Court order dated 3 September 2022, following the payment of sale costs and the discharge of the first ranking mortgagee, the net sale proceeds will be paid into a controlled monies account held by Allens.

25 I refer to the letter referred to paragraph 22(o) above.

Paragraphs 30 to 35

26 I understand that the loans to NAB and Aksara are not presently being serviced, and have not been serviced since:

- (a) 21 June 2021 in respect of the NAB Debt as it relates to the Bulkara Properties;
- (b) 23 June 2021 in respect of the Aksara Debt; and
- (c) 24 January 2022 in respect of the NAB Debt as it relates to the 14 James Street Properties.

27 In my experience, in the event that the Receivers do not sell the Real Properties, secured lenders holding mortgages (registered or otherwise) over the Real Properties will likely enforce their security, including by exercising their power of sale.

28 As a result of the default notices referred to at paragraph 16 above, I understand that default interest is currently accruing under both the NAB facilities and the Aksara facilities.

29 A delay in the sale of the Real Properties will also result in additional holding costs being incurred. These holding costs include, but are not limited to insurance and maintenance costs. By way of example: Receivers' fees, security system fees, land tax, council rates and further accrued NAB/Aksara interest and default interest.

30 In response to paragraph 33 of the Nasimi Affidavit, based on my current understanding of the NAB Debt and the Aksara Debt, the refinancing proposal would be insufficient to discharge both the NAB Debt and the Aksara Debt.

Passarelli Affidavit

Paragraphs 8 to 11

31 At page 300 of Exhibit JI-4, is an email from Fortis Law dated 8 August 2021 to the Receivers regarding the XOXO Yacht.

Paragraph 27

32 At page 303 of Exhibit JI-4 is an email from Barclay Tuck Yachts to Mr Tesoriero dated 22 July 2021.

Affirmed by the deponent
at Sydney
in New South Wales
on 7 February 2022
Before me:

)
)
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)
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Jason Ireland
Signature of deponent



Signature of witness

No. NSD 747 of 2021

Form 3 (adapted)

Rule 29.02(1)(8)

Federal Court of Australia

District Registry: NSW

Division: General

**IN THE MATTER OF THE FORUM GROUP OF COMPANIES PTY LIMITED ACN 151 964 626
(IN LIQUIDATION)**

14 James Street Pty Ltd ACN 638 449 206 (In Liquidation) and others

Plaintiffs

Affidavit of: **Jason Ireland**

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

Occupation: Registered Liquidator

Date: 7 February 2022

Exhibit Certificate

This is the Exhibit marked "**JI-4**" produced and shown to Jason Ireland at the time of affirming his affidavit this 7 February 2022.

Before me:



Signature of witness