

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 18/07/2022 6:30:50 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: 18/07/2022 6:40:54 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 of 616/2021

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

Westpac Banking Corporations ABN 33 007 457 141 and another named in the Schedule
Applicants

Forum Finance Pty Ltd ACN 153 301 172 (in Liquidation) and others named in the
Schedule
Respondents

Sixth Affidavit of: **Sarwar (Sazz) Nasimi**
Address: Level 6, 140 William Street, Melbourne 3000
Occupation: Legal practitioner
Date: 18 July 2022

Contents

Document number	Details	Paragraph	Page
1.	Sixth Affidavit of Sarwar (Sazz) Nasimi sworn 18 July 2022	1-26	2-5
2	Exhibit SN-6 being a paginated bundle of documents		1-9

Filed on behalf of (name & role of party) Vincenzo Frank Tesoriero, Third Respondent
 Prepared by (name of person/lawyer) Sazz Nasimi
 Law firm (if applicable) Madgwicks Lawyers
 Tel 03 9242 4780 Fax 03 9242 4777
 Email Sazz.Nasimi@Madgwicks.com.au
 Address for service Level 6, 140 Williams Street, Melbourne 3000 VIC
 (include state and postcode)

[Version 3 form approved 02/05/2019]

I, Sarwar (Sazz) Nasimi, of Level 6, 140 William Street Melbourne in the State of Victoria hereby make Oath and Say:

1. I am a legal practitioner and a partner within the law firm Madgwicks.
2. I make this affidavit from my own knowledge save where otherwise indicated. Where I depose to matters that I have been informed of by others, I believe those matters to be true and correct.
3. Madgwicks represents the Third Respondent (**Mr Tesoriero**) and his associated entities in the present proceeding, and I am the responsible partner within the firm with the ultimate care and conduct of the matter on their behalf.
4. Now produced and shown to me marked "**SN-6**" is a bundle of documents exhibited to this affidavit (**Exhibit Bundle**). In this affidavit, I refer to the documents in the Exhibit Bundle as SN-6 at pages [page number].
5. I swear this affidavit in order to provide an explanation for the delays referenced by Westpac at the hearing on 1 July 2022.

Discovery

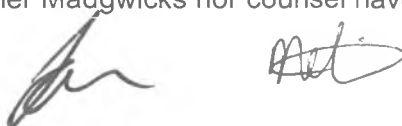
6. Mr Tesoriero and his related entities were unable to provide discovery in this proceeding until 14 July 2022.

Volume of Documents

7. The majority of the documents to be discovered by Mr Tesoriero and his related entities are emails. The emails in Mr Tesoriero's possession have been backed-up to his laptop in a "mail" application. The emails can no longer be accessed by Mr Tesoriero on a normal mail server because the Receivers have taken possession of those servers and restricted Mr Tesoriero's access.
8. As a result, the emails can only be extracted from his computer in a specific format which must then be converted into a PDF. This process is both cumbersome and time consuming and has involved several rounds of trial and error before a solution was achieved.
9. Madgwicks has now been provided with over 32,000 emails by Mr Tesoriero. These emails are being reviewed in order to remove any spam or junk emails and to determine if they consist of any material which may be privileged. Thereafter converted to PDF, and then listed in a schedule for production.

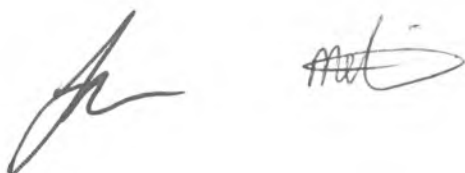
Inability to Direct Resources

10. The inability to finalise discovery until recently has been largely due to, the issues concerning the software application and the volume of documents.
11. Further, we have been hampered by our inability to direct resources towards this task due to being without funds.
12. As stated at paragraph 35 of Mr Tesoriero's fifth affidavit sworn 17 June 2022, Madgwicks has only received the amount of \$48,430.19 in payment of its legal fees to date. Neither Madgwicks nor counsel have been paid for work undertaken in this



matter since December 2021. Without funds, I am unable to direct the resources that I would otherwise prefer in attending to tasks such as discovery.

13. Conversely, if the funding was in place, I would be able to justify to the partnership the allocation of further resources to the present matter or I could retain additional people to assist. However, without funds I can do neither and this, in my view, does place Mr Tesoriero at a significant disadvantage with respect to his defence to the claims being made against him.
14. In my affidavit sworn on 9 November 2021, I deposed to MinterEllison having at least 6 practitioners working on this matter. I believe Allens have at least 4 practitioners working on this matter I am unsure of the fees that have been charged by MinterEllison or Allens but I would envisage that they have both received more than \$48,430.19.
15. Since the Court's orders of 10 March 2022 requiring discovery to be made, Madgwicks has received approximately 240 pieces of correspondence from MinterEllison and Allens alone. This correspondence has been received from 16 different practitioners collectively across both firms.
16. A large portion of this correspondence, in my view, has been in relation to issues which did not require such lengthy and drawn-out correspondence. By way of example, the Receivers took possession of the chattels which were stored at 14A James Street on 26 March 2022. These chattels belonged to Mr Tesoriero and or his family members and friends. The chattels were seized in circumstances where Mr Tesoriero was organising to remove the chattels so that they were not stored at the James Street property. Notwithstanding this, the Receivers still proceeded to seize the items and then refuse to return them. A plethora of correspondence was exchanged on this issue before the Receivers conceded the point and agreed to return the chattels.
17. Thereafter, in early May 2022, the Receivers agreed to return those chattels to Mr Tesoriero. The issue of delivery of those items has been the subject of approximately 17 separate pieces of communication between Madgwicks and Allens. This is in addition to Mr Tesoriero also corresponding with the Receivers' agents who have been tasked with delivering the chattels.
18. Often, resources have had to be directed to other aspects of the dispute due to some artificial urgency created by the other side. An example of this is the correspondence received by Madgwicks from Allens on 2 June 2022. In that email Allens stated that the Receivers were willing to organise delivery of the relevant chattels to Mr Tesoriero with no charge on the condition that the deliveries were made by 4pm on 10 June 2022. Despite the unilateral urgency imposed by the Receivers in that email, as at the date of swearing this affidavit, Mr Tesoriero has still not received all of the chattels. I understand from Mr Tesoriero that this is a result of the Receivers' agents not having the correct equipment to return the items.
19. Madgwicks currently has 3 practitioners (including myself) and 1 administrative assistant allocated to this matter.
20. As a result of the lack of funds, Madgwicks is unable to justify allocating its practitioners to this matter solely. We are therefore undertaking work on this matter in addition to other matters.



21. Despite the assertions made in Westpac's submissions filed on 1 July 2022, Madgwicks could not apply to vary the freezing order any earlier than it did. Further, the need for making the present application was always contemplated and this fact was made known to the solicitors for Westpac. Matters only became critical when, Westpac, despite existing Court orders and representations made to the Court, refused to consent to the release of further funds for Mr Tesoriero's legal fees. I also refer to paragraphs 8 to 25 of my affidavit sworn 28 June 2022 to further highlight Westpac's conduct.

Further and better particulars

22. On 17 and 25 May 2022 respectively, Madgwicks received letters from MinterEllison and Jones Day requesting further and better particulars from Mr Tesoriero and his related entities (**Requests**). The Requests are similar in nature as they both request details of investments made and returns received by Mr Tesoriero and his related entities.
23. Mr Tesoriero has responded to the Requests confirming that he is unable to provide the requested particulars at this time due to limited access to records.
24. In order to try and obtain the relevant information so Mr Tesoriero may respond to the Requests, Mr Tesoriero's legal team have been required to review the discovery provided by Westpac in this proceeding. This includes approximately 35,000 documents. For the reasons outlined at paragraphs 10 to 21 above, this review has been unable to be completed.
25. Notwithstanding the above, Mr Tesoriero has provided a table of particulars of the information he has been able to obtain from his accountant.
26. It has also become apparent that Mr Tesoriero may be required to issue subpoenas in order to obtain any further information.

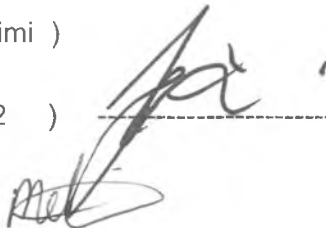
Now produced and shown to me marked "SN-6" at pages 2 to 9 are the letters to MinterEllison dated 12 July 2022 and Jones Day dated 18 July 2022.

The contents of this my affidavit are true and correct and I make it knowing that a person making a false affidavit may be prosecuted for the offence of perjury.

Sworn by Sarwar (Sazz) Nasimi)

at Melbourne on 18 July 2022)

Before me:



Melissa Passarelli
6th Floor, 140 William St, Melbourne, Vic, 3000
An Australian Legal Practitioner
within the meaning of the
Legal Profession Uniform Law (Victoria).

As a witness, I certify the following matters concerning the person who made this affidavit (deponent):

1. This affidavit is witnessed over audio-visual link in accordance with Part 2B of the Electronic Transactions Act 2000 (NSW).
2. I observed the deponent signing a copy of this affidavit in real-time.
3. I attest or otherwise confirm witnessing the deponent's signature by signing this affidavit.

4. I am reasonably satisfied this affidavit signed by me is a copy of the affidavit signed by the deponent.

5. I have known the person for at least 12 months.

Schedule of Parties

No. NSD616 of 2021

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

Applicants

First Applicant Westpac Banking Corporation ABN 33 007 457 141
 Second Applicant Westpac New Zealand Limited (company registration number company number 1763882)

Respondents

First Respondent Forum Finance Pty Limited (in liquidation) ACN 153 301 172
 Second Respondent Basile Papadimitriou
 Third Respondent Vincenzo Frank Tesoriero
 Fourth Respondent Forum Group Financial Services Pty Ltd (provisional liquidators appointed) ACN 623 033 705
 Fifth Respondent Forum Group Pty Ltd (Receivers Appointed) (in liquidation)
 ACN 153 336 997
 Sixth Respondent Forum Enviro Pty Ltd (provisional liquidators appointed)
 ACN 168 709 840
 Seventh Respondent Forum Enviro (Aust) Pty Ltd (provisional liquidators appointed) ACN 607 484 364
 Eighth Respondent 64-66 Berkeley St Hawthorn Pty Ltd ACN 643 838 662
 Ninth Respondent 14 James Street Pty Ltd (in liquidation) ACN 638 449 206
 Tenth Respondent 26 Edmonstone Road Pty Ltd (in liquidation) ACN 622 944 129
 Eleventh Respondent 5 Bulkara Street Pty Ltd (in liquidation) ACN 630 982 160
 Twelfth Respondent 6 Bulkara Street Pty Ltd (in liquidation) ACN 639 734 473
 Thirteenth Respondent 23 Margaret Street Pty Ltd ACN 623 715 373
 Fourteenth Respondent 1160 Glen Huntly Road Pty Ltd ACN 639 447 984
 Fifteenth Respondent 14 Kirwin Road Morwell Pty Ltd ACN 641 402 093
 Sixteenth Respondent Canner Investments Pty Ltd ACN 624 176 049
 Seventeenth Respondent 123 High Street Taradale Pty Ltd ACN 639 872 512
 Eighteenth Respondent 160 Murray Valley Hwy Lake Boga Pty Ltd ACN 641 392 921
 Nineteenth Respondent 31 Ellerman Street Dimboola Pty Ltd ACN 641 392 887

Twentieth Respondent	4 Cowslip Street Violet Town Pty Ltd ACN 639 872 352
Twenty-First Respondent	55 Nolan Street Maryborough Pty Ltd ACN 641 392 912
Twenty-Second Respondent	89 Betka Road Mallacoota Pty Ltd ACN 641 393 179
Twenty-Third Respondent	9 Gregory Street Ouyen Pty Ltd ACN 641 392 707
Twenty-Fourth Respondent	9 Main Street Derrinallum Pty Ltd ACN 639 872 736
Twenty-Fifth Respondent	286 Carlisle Street Pty Limited ACN 610 042 343
Twenty-Sixth Respondent	275 High Street Golden Square Pty Ltd ACN 639 870 545
Twenty-Seventh Respondent	Mazcon Investments Hellas IKE
Twenty-Eighth Respondent	Palante Pty Ltd ACN 135 344 151
Twenty-Ninth Respondent	Anastasios Giamouridis
Thirtieth Respondent	The Forum Group of Companies Pty Ltd (in liquidation) ACN 151 964 626
Thirty-First Respondent	Iugis Pty Ltd (in liquidation) ACN 632 882 243
Thirty-Second Respondent	Iugis (UK) Limited
Thirty-Third Respondent	Iugis Holdings Limited
Thirty-Fourth Respondent	Iugis Global Financial Services Limited
Thirty-Fifth Respondent	Iugis Finance Limited
Thirty-Sixth Respondent 168	Spartan Consulting Group Pty Ltd (in liquidation) ACN 989 544 ACN
Thirty-Seventh Respondent	Intrashield Pty Ltd (in liquidation) ACN 133 426 534
Thirty-Eighth Respondent	Tesoriero Investment Group Pty Ltd ACN 161 088 115
Thirty-Ninth Respondent	Mangusta (Vic) Pty Ltd ACN 631 520 682
Fortieth Respondent	193 Carlisle Street Enterprises Pty Ltd ACN 612 615 237
Forty-First Respondent	8-12 Natalia Ave Oakleigh Pty Ltd ACN 643 838 626
Forty-Second Respondent	Iugis Hellas IKE
Forty-Third Respondent	Iugis Energy SA
Forty-Fourth Respondent	Eric Constantinidis
Forty-Fifth Respondent	Giovanni (John) Tesoriero
Forty-Sixth Respondent	Moussa (Tony) Bouchahine
Forty-Seventh Respondent	Louisa Maria Agostino
Forty-Eighth Respondent	D&D Group O.E
Forty-Ninth Respondent	Aromatika Fyta Tsai Olympou Theion Ike

Exhibit certificate

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

No. NSD 616 of 2021

Westpac Banking Corporations ABN 33 007 457 141

Applicant

Forum Finance Pty Ltd ACN 153 301 172 (in Liquidation) and others according to the
Schedule

Respondents

This is the exhibit marked "**SN-6**" now produced and shown to Sazz (Sarwar) Nasimi at the time of swearing his affidavit on 18 July 2022 before me:



Solicitor

Melissa Passarelli
6th Floor, 140 William St, Melbourne, Vic, 3000
An Australian Legal Practitioner
within the meaning of the
Legal Profession Uniform Law (Victoria).

Caitlin Murray
Partner
Minter Ellison
Level 40 Governor Macquarie Tower
1 Farrer Place
SYDNEY NSW 2000

Date: 12 July 2022
File No: 047678
Partner: Sazz Nasimi
Your Ref: 1353397

By email: caitlin.murray@minterellison.com

Dear Ms Murray

**Westpac Banking Corporation & Anor v Forum Finance Pty Limited (in liquidation) & ors
Federal Court of Australia proceeding number NSD616/2021 (Proceedings)**

We refer to your letter dated 17 May 2022 seeking further and better particulars of paragraph 1900(l) of the defence filed by Mr Tesoriero on 20 April 2022 (**Defence**).

Mr Tesoriero is not yet in a position to provide the requested particulars.

As stated in paragraph 23 of Mr Tesoriero's affidavit sworn on 8 November 2021, Mr Tesoriero does not have access to records relating to the Tesoriero Investment or the Tesoriero Return. Mr Tesoriero expects to receive access to those records as part of the discovery and by extension subpoena processes in the Proceedings. This is why the existing particulars to paragraph 1900(l) state that further particulars may be provided after discovery. As you would appreciate the discovery provided by Westpac is voluminous and we are presently working our way through that material. Thus far we have not located the documents required by our client in order to enable it to respond to your request for particulars. We will inform you if that position changes otherwise we will proceed to issue subpoenas in order to obtain the required records.

In addition to the above we have some concern with respect to some of the particulars that you are seeking as they do not appear to be a proper request for particulars. We are still considering this issue and reserve our clients' position to object to your request or portions of it, should the need arise.

Under cover of that general position, in the Annexure to this letter we have provided particulars of the payments relied on in support of the allegations made in paragraph 1900(l), based on the information available to date. In relation to those payments, we note the following matters which have become apparent upon receipt of further information:

- the amount of \$1,000,000 referred to in paragraph (i) of the particulars was in fact two payments, being payments 1 and 2 in the Annexure;

- we have identified a further payment, being payment 6 in the Annexure;
- we have identified that the payment in paragraph (v) of the particulars was related to the payment in paragraph (vi), and not a separate payment.

As a result of these matters, the payments we have identified to date as forming part of the Tesoriero Investment total \$4,860,000, rather than \$6,869,755 as particularised in the existing pleading. Our clients reserve the right to provide particulars of further payments after our review of the discovered documents and any documents produced pursuant to subpoenas.

Once discovery has been completed, and Mr Tesoriero has had an opportunity to review it, we will respond further to your request.

Yours faithfully
MADGWICKS



Sazz Nasimi
Partner

T: 03 9242 4741
E: Sazz.Nasimi@madgwicks.com.au



Melissa Passarelli
Senior Associate

T: 03 9242 4780
E: Melissa.Passarelli@madgwicks.com.au

**Copy to: Andrew.Clarke@minterellison.com; Anthony.Sommer@minterellison.com;
Michael.Hughes@minterellison.com; Claire.Latham@minterellison.com and
projectolympus@minterellison.com**

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ANNEXURE
Payments forming part of the Tesoriero Investment

#	Date	Amount	Means	Payer details	Payee
1	20 November 2012	\$100,000	EFT	Name: Giovanni Tesoriero & Teresa Tesoriero BSB: 037-146 A/c: 79-1967 Bank: Westpac	The Forum Group of Companies Pty Ltd
2	5 February 2013	\$900,000	EFT	Name: Giovanni Tesoriero & Teresa Tesoriero BSB: 037-146 A/c: 79-1967 Bank: Westpac	The Forum Group of Companies Pty Ltd
3	4 October 2013	\$200,000	Cheque	Name: Tesoriero Investment Group Pty Ltd as trustee for the Tesoriero Investment Trust BSB: 033-002 A/c: 67-1917 Bank: Westpac	The Forum Group of Companies Pty Ltd

#	Date	Amount	Means	Payer details	Payee
4	4 October 2013	\$60,000	Cheque	Name: Giovanni Tesoriero & Teresa Tesoriero BSB: 037-146 A/c: 79-1967 Bank: Westpac	The Forum Group of Companies Pty Ltd
5	2 June 2014	\$1,500,000	EFT	Name: Giovanni Tesoriero & Teresa Tesoriero BSB: 082-356 A/c: 83-744-3719 Bank: NAB	Name: The Forum Group of Companies Pty Ltd BSB: 082-080 A/c: 11-509-4529 Bank: NAB
6	5 September 2014	\$100,000	Telegraphic Transfer	Name: Giovanni Tesoriero & Teresa Tesoriero BSB: 082-356 A/c: 83-744-3719 Bank: NAB	Name: The Forum Group of Companies Pty Ltd BSB: 082-080 A/c: 11-509-4529 Bank: NAB
7	2 May 2017	\$2,000,000	Telegraphic Transfer	Name: Giovanni Tesoriero & Teresa Tesoriero BSB: 733-349 A/c: 78-0597 Bank: Westpac	Name: The Forum Group of Companies Pty Ltd BSB: 082-080 A/c: 11-509-4529 Bank: NAB

Maria Yiasemides and Roger Dobson
Jones Day
Level 41, 85 Phillip Street
SYDNEY NSW 2000

Date: 18 July 2022
File No: 047678
Author: Melissa Passarelli
Partner: Sazz Nasimi
Your Ref: AUI-932195405v1

By email: myiasemides@jonesday.com
rdoobson@jonesday.com

Dear Ms Yiasemides and Mr Dobson

SMBC Leasing & Finance v Forum Enviro (Aust) Pty Ltd (Voluntary Administrators Appointed) & Ors - NSD681/2021 (the Proceedings)

We refer to your letter dated 25 May 2022 seeking further and better particulars of paragraph 525(d) of the defence filed by 23 Margaret Street and paragraph 535(c) on 20 April 2022 of the defence filed by 64-66 Berkeley Street (**Defences**).

We have some concerns with respect to some of the particulars that you are seeking as they do not appear to be a proper request for particulars. We are still considering this issue and reserve our clients' position to object to your request or portions of it, should the need arise.

Our clients are otherwise not yet in a position to provide the requested particulars.

As stated in paragraph 23 of Mr Tesoriero's affidavit sworn on 8 November 2021, Mr Tesoriero does not have access to records relating to the Tesoriero Investment or the Tesoriero Return. Mr Tesoriero expects to receive access to those records as part of the discovery and by extension subpoena processes in the other related proceedings. This is why the existing particulars in paragraphs 525(d) and 535(c) respectively, state that further particulars may be provided after discovery. As you would appreciate the discovery provided by Westpac is voluminous and we are presently working our way through that material. Thus far we have not located the documents required by our clients in order to enable them to respond to your request for particulars. We will inform you if that position changes otherwise we will proceed to issue subpoenas in order to obtain the required records.

Under cover of that general position, in the Annexure to this letter we have provided particulars of the payments relied on in support of the allegations made in paragraphs 525(d) and 535(c) respectively, based on the information available to date. In relation to those payments, we note the following matters which have become apparent upon receipt of further information:

- the amount of \$1,000,000 referred to in paragraph (i) of the particulars was in fact two payments, being payments 1 and 2 in the Annexure;
- we have identified a further payment, being payment 6 in the Annexure;

MADGWICKS
ABN 82 199 611 971

Level 6
140 William Street
Melbourne VIC 3000
Australia
DX 485

T: +61 3 9242 4744
F: +61 3 9242 4777
E: madgwicks@madgwicks.com.au
W: madgwicks.com.au


MERITAS

- we have identified that the payment in paragraph (v) of the particulars was related to the payment in paragraph (vi), and not a separate payment.

As a result of these matters, the payments we have identified to date as forming part of the Tesoriero Investment total \$4,860,000, rather than \$6,869,755 as particularised in the existing pleading. Our clients reserve the right to provide particulars of further payments after our review of the discovered documents and any documents produced pursuant to subpoenas.

Once discovery has been completed, and Mr Tesoriero has had an opportunity to review it, we will respond further to your request.

Yours faithfully

MADGWICKS



Sazz Nasimi
Partner



Melissa Passarelli
Senior Associate

T: 03 9242 4741

E: Sazz.Nasimi@madgwicks.com.au

T: 03 9242 4780

E: Melissa.Passarelli@madgwicks.com.au

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