

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 29/06/2022 8:38:54 AM 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: 29/06/2022 8:48:31 AM 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

Fourth Affidavit of **Sarwar (Sazz) Nasimi**

Address: Level 6, 140 William Street, Melbourne 3000

Occupation: Legal practitioner

Date: 28 June 2022

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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 4720

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]


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047678:4860656_1

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

1. I am a legal practitioner and a partner within the law firm Madgwicks.
2. Madgwicks represents the Third Respondent 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.
3. 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.
4. Annexed to this affidavit and shown to me at the time of swearing this affidavit is a paginated bundle of documents marked "SN-5". This exhibit contains all the documents referred to in my affidavit. Where reference is made to a specific document or part of a document, contained within "SN-5", it will be referred to by my initials followed by the page number on which that document or reference appears, i.e. **SN-#**.
5. I have previously sworn affidavits in this matter on 9 November 2021, 3 February 2022 and 8 February 2022. For present purposes, I also rely on those affidavits and in particular paragraphs 13-21 of the affidavit sworn 9 November 2021 and para 23 of the affidavit sworn 8 February 2022.

Legal Costs

6. At paragraph 21 of my 9 November 2021 affidavit and paragraph 23 of my 8 February 2022 affidavit, I provided tables that contained estimates of legal fees that I believed would be incurred by Mr Tesoriero in undertaking various steps in the proceeding. I have since revised my estimate to include the estimated costs up to the conclusion of the trial listed for 10 October 2021 and have provided this estimate to Mr Tesoriero. I have read the affidavit of Mr Tesoriero dated 17 June 2022 and confirm that the table provided by Mr Tesoriero at paragraph 34 of his affidavit is consistent with the most recent estimate that I have provided to Mr Tesoriero.
7. I confirm that paragraph 35 of Mr Tesoriero's 17 June affidavit is true and correct. As at the time of swearing this affidavit, Madgwicks has only applied \$36,457.21 (inclusive of GST) towards its fees for the legal work undertaken for and on behalf of Mr Tesoriero and his entities.



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Correspondence On The Issue of Legal Costs

8. I am informed and verily believe that in early March 2022, junior counsel for Mr Tesoriero, on my insistence, discussed the issue of legal costs with the junior counsel for Westpac. In particular, consent was sought from Westpac to allow Mr Tesoriero to apply some of the funds from the sale 23 Margaret Street, which were being held in the Madgwicks trust account, towards outstanding legal fees. This was in circumstances where the Court had, a mere few weeks earlier, varied the freezing orders by increasing the cap for legal fees that were carved out from the freezing orders. Previously, Westpac had insisted that all moneys obtained from the sale of 23 Margaret Street be placed in a controlled monies account (**CMA**). As the CMA had not, as at that time, been created the request was made of Westpac to allow Mr Tesoriero to apply the funds (up to the revised cap) towards his legal fees. The request was made in the hope of avoiding the unnecessary double handling which required the funds to be first withdrawn from the Madgwicks trust account and placed in the CMA and then be withdrawn from the CMA and paid back to Madgwicks. Despite the pragmatism of this approach, junior counsel for Westpac, disappointingly opposed this request and instead insisted on the CMA being created first and that too with the Westpac bank.
9. On 9 March 2022, Madgwicks sent an email to MinterEllison attaching a document required by Westpac in order to set up a CMA in the joint control of Madgwicks and MinterEllison. The email noted that an original copy needed to be signed and requested confirmation of the best address to send the original to. Now produced and shown to me at pages 1 to 8 of SN-5 is a true copy of the email dated 9 March 2022.
10. On 14 March 2022, MinterEllison emailed Madgwicks requesting that the original forms be sent to MinterEllison's Sydney office. Madgwicks then arranged for the documents to be sent by express post (next day delivery) to the nominated address. Now produced and shown to me at page 9 of SN-5 is a true copy of the email dated 14 March 2022.
11. On 23 March 2022, MinterEllison confirmed receipt of the original documents and stated they would send the signed documents back to Madgwicks' office via express post. Now produced and shown to me at page 10 of SN-5 is a true copy of the email from MinterEllison dated 23 March 2022.
12. On or about 1 April 2022, Madgwicks received the signed original documents and forwarded these documents to Westpac Bank so that they could set up the CMA. Westpac then informed Madgwicks that it required 8-digit customer numbers for the



nominated partners at MinterEllison, or alternatively the partners' residential address, to assist with their identification process. On 5 April 2022, Madgwicks wrote to MinterEllison asking them to provide the information requested by Westpac Bank. Now produced and shown to me at page 11 of SN-5 is a true copy of the email dated 5 April 2022

13. On 20 April 2022, Madgwicks sent an email to MinterEllison following them up on the details requested by Westpac Bank as a matter of urgency. Now produced and shown to me at page 12 of SN-5 is a true copy of the email dated 20 April 2022
14. On 21 April 2022, MinterEllison emailed Madgwicks to inform them that MinterEllison had completed the partner verification process directly with Westpac and there should be no need for the 8-digit customer number of residential addresses to be provided. Madgwicks then forwarded the signed form to Westpac Bank to set up the controlled monies account. The CMA was ultimately set up on 26 May 2022 and the proceeds from 23 Margaret Street were transferred into this account. Now produced and shown to me at page 13 of SN-5 is a true copy of the email dated 21 April 2022.
15. On 30 May 2022, Madgwicks sent an email to MinterEllison confirming that the proceeds from the sale of 23 Margaret St had been paid into the CMA and informing them of anticipated legal costs. Further, that email requested that Westpac agree to:
 - (a) the immediate release of \$270k from the CMA (being the amount remaining in the existing cap on legal fees pursuant to the orders of the Court dated 12 November 2021);
 - (b) a revised cap of \$1.86m for legal fees in the freezing orders; and
 - (c) a further release from the CMA/ Court funds to cover the shortfall in actual costs once the cap on legal fees was increased.

Now produced and shown to me at pages 14 to 16 of SN-5 is a true copy of the email sent by Madgwicks to MinterEllison dated 30 May 2022.

16. In the intervening period Madgwicks had made enquiries of the bank in order to ascertain what was required by it in order to facilitate the release of the funds. Westpac informed us of the procedure and provided a bank document which was required to be signed by all the signatories to the CMA and the original (not in counterpart) be returned to the bank.



17. On the same day, Madgwicks received a response from MinterEllison stating that Westpac was concerned about property and assets over which it asserts a proprietary claim being eroded and demanded that Mr Tesoriero demonstrate to them that he did not have access to his own and other funds. Now produced and shown to me at page 17 of SN-5 is a true copy of the email sent by MinterEllison to Madgwicks dated 30 May 2022.
18. On 2 June 2022, Madgwicks received further correspondence from MinterEllison agreeing that a variation of the freezing orders was required. However, the letter stated that to the extent that Westpac claimed a proprietary interest over the funds, Westpac would oppose those funds being used for payment of legal fees. In essence, this equated to a proprietary claim being made over all of the assets available to our client.

As to the release of the \$270,000 pursuant to the orders of the Court dated 12 November 2021, Westpac did provide its partial consent. I use the term "partial" because in addition to its consent, Westpac unilaterally imposed a further condition to the release of the \$270,000, namely the consent of SMBC Leasing and Finance Inc (**SMBC**). As SMBC was not involved in the creation of the CMA or taken part in the freezing order against Mr Tesoriero I was uncertain as to why SMBC's consent was required. Now produced and shown to me at pages 18 to 21 of SN-5 is a true copy of the email and attached letter sent by MinterEllison to Madgwicks dated 2 June 2022.

19. On 14 June 2022, Madgwicks sent MinterEllison a copy of the document they were requested to sign in order to have the funds released from the CMA. Further, Madgwicks requested that MinterEllison sign and return the document to it immediately via express post. Later that same day, Madgwicks received an email from MinterEllison reasserting that SMBC's consent was required before they would sign any document authorising the release of funds from the CMA. Now produced and shown to me at pages 22 to 24 of SN-5 is a true copy of the correspondence between MinterEllison and Madgwicks dated 14 June 2022.
20. On 16 June 2022, Madgwicks wrote to the solicitors for SMBC requesting their consent to the release of the \$270,000 from the CMA without admission that SMBC's consent was required. MinterEllison was copied into this correspondence. Now produced and shown to me at pages 25 to 28 of SN-5 is a true copy of the email sent to Jones Day dated 16 June 2022.



21. On 22 June 2022, SMBC consented to the release of the \$270,000 for reasonable legal expenses, though SMBC withheld consent for any funds being released to pay Mr Tesoriero's living expenses. I note that Mr Tesoriero, despite the Court's Orders, has also been unable to withdraw any funds from the CMA by virtue of the positions taken by SMBC and Westpac respectively. MinterEllison was copied into this email. Now produced and shown to me at page 29 of SN-5 is a true copy of the email dated 22 June 2022.
22. Later that same day, having obtained the consent of SMBC, Madgwicks wrote to MinterEllison requesting that they urgently sign and deliver the document previously provided on 14 June 2022. Now produced and shown to me at page 30 of SN-5 is a true copy of email to MinterEllison dated 22 June 2022
23. On 24 June 2022, Madgwicks sent MinterEllison a follow-up to the 22 June 2022 email, noting that Madgwicks had received final demands in relation to various disbursements incurred for Mr Tesoriero in connection with the proceedings. Now produced and shown to me at page 31 of SN-5 is a true copy of the email dated 24 June 2022.
24. Later that same day, MinterEllison sent Madgwicks an email stating the letter was in the process of being signed and would be posted later that day. MinterEllison then sent Madgwicks a soft copy of the document. Now produced and shown to me at pages 32 of SN-5 is a true copy of the email to Madgwicks dated 24 June 2022.
25. As of the date of swearing this affidavit, Madgwicks have still not received the original signed document despite making the urgency clear to MinterEllison.
26. On 28 June 2022, at approximately 2:00pm Madgwicks received an email from Jones Day solicitors stating that SMBC "*objects to the release of any funds*" to Mr Tesoriero to the extent that they are subject to a proprietary claim by SMBC. Further the email requested that basis on which Mr Tesoriero asserts his entitlement to access the funds. It is unclear from this email as to whether the previous consent, provided on 22 June 2022 is now being withdrawn by SMBC. Hence out of an abundance of caution I have instructed my accounts department to not deal with the \$270,000 once it is received and receipted by us. Later the same day Madgwicks responded to say we would be filing submissions shortly which provides a response to that query. Now produced and shown to me at pages 33 to 34 of SN-5 are true copies of the email chain between Jones Day and Madgwicks dated 28 June 2022.



Statutory demand proceedings

27. Further to paragraphs 25-28 of Mr Tesoriero's 17 June 2022 affidavit, on 28 June 2022 the Associate to the Honourable Justice McEvoy informed the parties that the statutory demand proceeding was listed for interlocutory hearing on 7 July 2022.

Interest of Aksara Holdings Pty Ltd

28. On 3 June 2022, Madgwicks sent a letter to Dentons, the solicitors for National Australia Bank (**NAB**) who is the mortgagee in possession of 5 Bulkara Street, Wagstaff (**5 Bulkara St**), and copied in the interested parties. In this letter, Madgwicks requested the details concerning the sale of 5 Bulkara St and informed Dentons that Aksara Holdings Pty Ltd (**Aksara**) holds an equitable mortgage over 5 Bulkara St. Now produced and shown to me at pages 35 to 36 of SN-5 is a true copy of the letter sent to Dentons dated 3 June 2022.
29. On 8 June 2022, Madgwicks received a letter from MinterEllison claiming the Westpac claim to the proceeds from the sale of 5 Bulkara St took priority over Aksara's equitable mortgage. Westpac did not however dispute Aksara's interest. Later the same day, Madgwicks received an email from Dentons stating that NAB did not propose to provide any details of the prospective sale, and absent an agreement between all claimants to any surplus, they would pay the surplus into Court. Now produced and shown to me at pages 37 to 39 of SN-5 are true copies of the correspondence received from MinterEllison and Dentons dated 8 June 2022.
30. On 20 June 2022, Madgwicks received an email from Dentons stating that NAB had exchanged contracts for the sale of 5 Bulkara St. The correspondence noted that they were not aware of any interest being claimed by Mr Tesoriero in the proceeds from the sale of 5 Bulkara St. Now produced and shown to me at pages 40 to 41 of SN-5 is a true copy of the email dated 20 June 2022.
31. On 27 June 2022, Madgwicks wrote to Dentons setting out Mr Tesoriero and his associated entities' interest in 5 Bulkara Street. Now produced and shown to me at page 42 of SN-5 is a true copy of the email to Dentons dated 27 June 2022.
32. To date, NAB maintains its refusal to provide Mr Tesoriero with any documents pertaining to the sale of 5 Bulkara St.



33. Likewise, to date the liquidators for 14 James Street Pty Ltd (in liquidation) have refused to provide Mr Tesoriero with any documents pertaining to the sale of 14A James Street Clayton South Vic.

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

Sworn by Sarwar (Sazz) Nasimi)

at Melbourne on 28 June 2022)

Before me:

MELISSA PASSARELLI
Level 6, 140 William Street Melbourne VIC 3000
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 Derrinalum 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 Spartan Consulting Group Pty Ltd (in liquidation) ACN 168 989 544 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-5**" now produced and shown to Sazz (Sarwar) Nasimi at the time of swearing his affidavit on 28 June 2022 before me:



Solicitor

MELISSA PASSARELLI
Level 6, 140 William Street Melbourne VIC 3000
Australian Legal Practitioner within the meaning
of the Legal Profession Uniform Law (Victoria)

Candy Nelson

From: Melissa Passarelli
Sent: Wednesday, 9 March 2022 6:18 PM
To: Caitlin Murray; Andrew Clarke
Cc: Sazz Nasimi; Alexandra Lawrence; Candy Nelson; Mackenzie Preston; Michael Hughes; Alana Galasso; Simon Brandis; Claire Latham; Kate Cockburn
Subject: Controlled Monies Accounts [MADG-CURRENT_MATTERS.18091.047678]
Attachments: Westpac Bank Form.pdf

Dear All

We refer to the orders dated 9 February 2022 stating that the proceeds from the sale of 23 Margaret Street are to be paid into a controlled trust account operated by our respective clients. We confirm that, with your consent, the proceeds are presently sitting as protected funds in the Madgwicks Trust Account pending the establishment of a controlled monies account.

After extensive discussion with Westpac Banking Corporation (in their capacity as the bankers for the Madgwicks Trust Account), we have been provided with the **attached** Notice of Authority in order to set up a controlled monies account. This account will only be able to be controlled with the consent of **all** of the signatories listed on pages 2 and 3. We propose that two partners from each of our respective offices complete this form in order to control the account. We have taken the liberty of having the form signed by two of our partner already.

Unfortunately, Westpac does not accept electronically signed documents or documents in counterpart. As such, we intend to deliver the hard copy of the **attached** document to your office to arrange signing. Could you please confirm if this should be delivered to your Melbourne or Sydney office.

We note that all of the signatories will need to be verified by Westpac. If the signing partners from your office do not have verification set up with Westpac already they may attend to this at any Westpac branch.

Once the form is signed and identities verified please arrange for the original copy to be returned to our office and we will finalise the setting up of the controlled monies account.

Please do not hesitate to contact us if you have any queries.

Regards

Melissa Passarelli
Associate

MADGWICKS
LAWYERS

[Visit our COVID-19 Resources Hub for practical information to assist you through this time](#)

T: +61 3 9242 4780 E: Melissa.Passarelli@madgwicks.com.au

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Security Warning: We take cyber security risks seriously. Please confirm any bank transfer details by phone directly before making a payment.



Westpac Banking Corporation
 ABN 33 007 457 141
 ('the Bank')

Notice of Authority - New/Replacement

- Complete in black or blue pen

Use this form to:

Establish new signatories to all accounts	Complete Sections A, B, D, E, G or H Read Section F
OR	
Establish new signatories to one or more accounts	Complete Sections A, B, D, E, G or H Read Section F
OR	
Establish the same signatories from an existing account to one or more new accounts	Complete Sections A, C, G or H Read Section F

NOTE: THE PERSONS AUTHORISED ON THIS FORM WILL REPLACE ANY EXISTING PERSONS AUTHORISED ON THE ACCOUNT(S) LISTED BELOW

Section A: Account holder name (s)

Account holder name (provide the full names of the individuals, trustees, business proprietors or organisations (company, society, club or association) and ABN, ACN, ARSN or ARBN (if applicable))

Full name

MADGWICKS

Trading Name OR Account Designator (if applicable)

and MinterEllison ATF Vincenzo Tesoriero CMA
--

- If more space is required, complete another Notice of Authority and write 'This is Annexure A to Notice of Authority dated/...../.....' at the top of **that** authority.
- At the top of **this** authority write 'See Annexure A dated/...../.....'

Section B: Select account(s)

- Add the authorised person(s) as signatory(ies) to the account(s) listed below

BSB number	Account number
033003	667565

- OR -

Section C: Copy existing account

For new account(s) below, apply the same list of authorised person(s) and the operating rule that applies on the existing account at the time this request is actioned by the Bank.

Existing Account

BSB number	Account number

New Account(s)

BSB number	Account number

BSB number	Account number

NOTE: The existing account authority will be applied at a point in time. To change the authority for the new account(s) above, the relevant authority form will need to be received by the Bank.

IF SECTION C IS COMPLETED, THEN GO TO >>> SECTION G OR H




Section D: Add authorised person(s) details and signature(s)


BEFORE COMPLETING READ THE PRIVACY STATEMENT

Details of Authorised Person(s)

Provide the details of each authorised person to operate and sign on behalf of the Account holder in accordance with the Operating Rule in Section E and Authorisation in Section F:

- Full name
- 8 digit customer number
- Residential address
- For organisational customers, the office held of that person (eg Director, Company Secretary or Treasurer)
- Any other name by which that person is commonly known
- Specimen signature

Given name SARWAR (SAZZ)	Middle name (if applicable)	Surname NASIMI
Residential address 6/140 William Street Melbourne Vic 3000		8 digit customer no. Specimen signature  Please sign within the box
Office held (if applicable)	Is the signatory known by any other name(s)? <input type="checkbox"/> Yes <input type="checkbox"/> No If 'YES', providename(s)	
IDV No. (Bank Use)		

Given name MARIQ	Middle name (if applicable) LUIQA	Surname G012099
Residential address 6/140 William Street Melbourne Vic 3000		8 digit customer no. Specimen signature  Please sign within the box
Office held (if applicable)	Is the signatory known by any other name(s)? <input type="checkbox"/> Yes <input type="checkbox"/> No If 'YES', providename(s)	
IDV No. (Bank Use)		

Given name	Middle name (if applicable)	Surname
Residential address		8 digit customer no. Specimen signature Please sign within the box
Office held (if applicable)	Is the signatory known by any other name(s)? <input type="checkbox"/> Yes <input type="checkbox"/> No If 'YES', providename(s)	
IDV No. (Bank Use)		

- If additional persons are authorised, complete another Notice of Authority and write 'This is Annexure A to Notice of Authority dated .../.../... ' at the **top** of that authority.
- At the top of **this** authority write 'See Annexure A dated .../.../... '.



Section D: Add authorised person(s) details and signature(s)

BEFORE COMPLETING READ THE PRIVACY STATEMENT

Details of Authorised Person(s)

Provide the details of each authorised person to operate and sign on behalf of the Account holder in accordance with the Operating Rule in Section E and Authorisation in Section F:

- Full name
- 8 digit customer number
- Residential address
- For organisational customers, the office held of that person (eg Director, Company Secretary or Treasurer)
- Any other name by which that person is commonly known
- Specimen signature

Given name		Middle name (if applicable)	Surname	
Residential address			8 digit customer no.	
Office held (if applicable)		Is the signatory known by any other name(s)? <input type="checkbox"/> Yes <input type="checkbox"/> No If 'YES', providename(s)		
IDV No. (Bank Use)		Specimen signature		

Please sign within the box

Given name		Middle name (if applicable)	Surname	
Residential address			8 digit customer no.	
Office held (if applicable)		Is the signatory known by any other name(s)? <input type="checkbox"/> Yes <input type="checkbox"/> No If 'YES', providename(s)		
IDV No. (Bank Use)		Specimen signature		

Please sign within the box

Given name		Middle name (if applicable)	Surname	
Residential address			8 digit customer no.	
Office held (if applicable)		Is the signatory known by any other name(s)? <input type="checkbox"/> Yes <input type="checkbox"/> No If 'YES', providename(s)		
IDV No. (Bank Use)		Specimen signature		

Please sign within the box

- If additional persons are authorised, complete another Notice of Authority and write 'This is Annexure A to Notice of Authority dated/..../....' at the **top** of that authority.
- At the top of **this** authority write 'See Annexure A dated/..../....'

Section E: Number of person(s) authorised

Select (✓) one option

Apply the Operating Rule for the authorised persons in Section D

If more than one person has been authorised, they will act in the following manner

- Any authorised person can operate and sign independently
- All authorised persons must operate and sign together
- At least authorised persons are required to operate and sign jointly
- Other (eg 'any two directors', or 'a director and company secretary') provide details below

Section F: Authorisation to the Bank

Authorised persons may operate on the Account holder's account(s) on their behalf as follows, subject to the relevant operating rule and the terms and conditions of the relevant account:

1. To draw cheques and other instruments.
2. To stop any cheque or other instrument drawn on the account(s).
3. To overdraw an account to any approved limit, and to the extent permitted by the Bank.
4. To authorise periodical payments or direct debits and debit that account with any charges or costs relating to such payments.
5. To operate and enter into agreements to operate on the account(s) in any way permitted by the Bank including transactions by electronic, mechanical and other means including methods of access which may be introduced in the future.
6. When an account is a Westpac Term Deposit or Farm Management Deposit account or Westpac Notice Saver Account:
 - fund an existing account;
 - receive payment of deposit moneys and interest;
 - give instructions on the payment (whether at maturity or otherwise) or renewal of that deposit.
 - Issue and cancel notices of withdrawal and issue reinvestment instructions in respect of funds in a Westpac Notice Saver Account.
7. To transfer accounts between branches (this may not be allowed for accounts held in Victoria).
8. To close all or any of the accounts.
9. To make, accept, endorse or discount cheques and other instruments made payable to, or to the order of, the Account holder or, where the Account holder is a trustee, to the estate or trust.
10. To make enquiries, to give instructions and generally to request and receive information in relation to the accounts.

Authorised persons may also act on the Account holder's behalf as follows:

1. In relation to property held by the Bank on the Account holder's behalf (including any property held in joint names or on behalf of the organisation):
 - to have access to, and receive from the Bank such property; and
 - to give the Bank instructions regarding such property
2. To arrange the issue and negotiation of letters of credit.
3. To give or sign any documents given by the Bank, including guarantees and indemnities relating to:
 - missing documents;
 - guarantees or undertakings given or to be given by the Bank in the Account holder's favour or on the Account holder's behalf at their request;
 - letters of credit issued or to be issued by the Bank on the Account holder's behalf or at their request, or in favour of any of their officers or agents.
4. To pledge, assign, give security over or make arrangements with the Bank regarding the Account holder's property and to receive any such property from the Bank.

PRIVACY STATEMENT

Personal information

We collect personal information from you to process your application, provide you with your product or service, and manage your product or service. We may also use your information to comply with legislative or regulatory requirements in any jurisdiction, prevent fraud, crime or other activity that may cause harm in relation to our products or services and help us run our business. We may also use your information to tell you about products or services we think may interest you.

If you do not provide all the information we request, we may need to reject your application or we may no longer be able to provide a product or service to you.

We may disclose your personal information to other members of the Westpac Group, anyone we engage to do something on our behalf, rewards program administrators and other organisations that assist us with our business.

We may disclose your personal information to an entity which is located outside Australia. Details of the countries where the overseas recipients are likely to be located are in our privacy policy.

As a provider of financial services, we have obligations to disclose some personal information to government agencies and regulators in Australia, and in some cases offshore. We are not able to ensure that foreign government agencies or regulators will comply with Australian privacy laws, although they may have their own privacy laws. By using our products or services, you consent to these disclosures.

We are required or authorised to collect personal information from you by certain laws. Details of these laws are in our privacy policy.

Our privacy policy is available at [westpac.com.au](https://www.westpac.com.au) or by calling 132 032. It covers:

- how you can access the personal information we hold about you and ask for it to be corrected;
- how you may complain about a breach of the Australian Privacy Principles or a registered privacy code and how we will deal with your complaint;
- how we collect, hold, use and disclose your personal information in more detail.

We will update our privacy policy from time to time.

For our customers located in the European Union

The General Data Protection Regulation (**GDPR**) regulates the collection, use, disclosure or other processing of personal data under European Union (**EU**) law. Personal data means any information relating to you from which you are either identified or may be identifiable. Our collection, use, disclosure and other processing of your personal data may also be regulated by the GDPR.

Please refer to our EU Data Protection Policy on our website at <https://www.westpac.com.au/privacy/eu-data-protection-policy/> for information about how we manage your personal data under the GDPR. The EU Data Protection Policy also forms part of this Privacy Statement.

We will use your personal information to contact you or send you information about other products and services offered by the Westpac Group or its preferred suppliers. Please call us on 132 032 or visit any of our branches if you do not wish to receive marketing communications from us.

OTHER ACKNOWLEDGMENTS AND CONSENTS

- We may confirm the details of the information provided in this application which includes contacting your employer to confirm salary, address or other personal details.
- Where you have provided information about another individual, you must make them aware of that fact and the contents of the Privacy Statement.
- This application form is not an offer or acceptance of credit.

DEFINITIONS

"We", "our", "us" means Westpac Banking Corporation ABN 33 007 457 141. "Westpac Group" means Westpac Banking Corporation and its related bodies corporate.

Authority Agreement

This authority continues to apply to the accounts listed in Section B or Section C (as applicable) and the authorised persons until the Bank receives written notice in a form satisfactory to the Bank from me, or any one or more of us, or the organisation ("the Account holder") that it has been cancelled or amended.

This authority cancels any previous authority the Account holder has given to the Bank regarding the persons authorised to act except in relation to:

- instruments dated before the date of this authority and presented for payment after you receive this authority, and
- any act done under the previous authority.

Joint Accounts

- Each Account holder acknowledges if any one or more of us dies,
 - any credit balance in any account held in our joint names will be payable to the surviving Account holder(s);
 - any property held by the Bank on our joint behalf will be deliverable to the survivor(s), and the Bank shall be free from all responsibility in paying or delivering any money or property to the survivor(s).
- Our liability is joint and several if any of our accounts is or becomes overdrawn.
- The Bank may accept for the credit of any of our accounts any instruments payable to any one or more of us.

Business Accounts

- There is no other person or organisation interested as proprietor of the business. I/We will write to the Bank immediately if there is a change of ownership of the business.
- If there is more than one proprietor of the business:
 - our liability is joint and several if any of our accounts is or becomes overdrawn; and
 - the Bank may credit any of our accounts with any instruments payable to any one or more of us.

Organisational Accounts

- For any type of organisation other than a company – we have given the Bank an up-to-date copy of the rules, by-laws, constitution or other document (if any) constituting the body named on this authority and authorising the signatory(ies) to act.
- For a company – on request from the Bank, we have provided an up-to-date copy of the certificate of registration (if any) or any other document requested to verify the company's registration.

Interpretation

In this authority:

- account includes a deposit account.
- except in the Privacy Statement, I, me, my, we, our and similar words refer to the organisation, persons or proprietors of the business named above as the Account holder.
- 'instruments' means cheques, drafts, bills of exchange, promissory notes and other instruments.
- 'joint account' means an account held by two or more natural persons but does not include an account held by the trustees of a trust or the proprietor(s) of a business.
- 'letters of credit' includes documentary letters of credit and stand-by letters of credit.
- 'organisation' refers to the company, society, club, institution or other association named above as the Account holder.
- 'property' includes packets, boxes, deeds, securities, bills of exchange, promissory notes, drafts, bills of lading, warehouse certificates, insurance policies, insurance bonds, deferred annuity policies, and any other documents or property of any kind.
- 'trustee account' means an account in the name of the trustees of a trust or the executors or administrators of a deceased estate.



AUTHORISED BY: COMPLETE SECTION G OR H (COMPLETE ONE SECTION ONLY, WHICHEVER IS APPLICABLE)

Section G

Complete this section if the authority is for an **organisation**.

By a legally constituted meeting of the organisation or directors of the company, as the case may be authority was given to the person(s) named to act in accordance with the terms of this authority.

This authority is signed for and on behalf of (*name of organisation*):

by (*signature*)

X

Full name

Office held (*eg. director*)

Date

/ /

and (*signature*)

X

Full name

Office held (*eg. director*)

Date

/ /

-OR-

Section H

Complete this section for any **personal, joint, trustee or business** (but not for an organisation) account. All persons named as the 'Account Holder' must sign.

Account Holder 1 - Full name

Signature

X

Date

/ /

Account Holder 2 - Full name

Signature

X

Date

/ /

Account Holder 3 - Full name

Signature

X

Date

/ /

Account Holder 4 - Full name

Signature

X

Date

/ /

Bank Use Only

Ensure that:

- Section G or H has been completed above
- ALL authorised persons have a valid IDV number. If there is no number held, perform the identification as detailed in the CAM, Chapter: Anti-Money Laundering
- The operating rule in Section E has been selected (*if applicable*)
- Date signatures scanned in SOL / /

Accepted by:

Full name

Angela Hill

Salary no.

F013114

Date

23/02/2022

Candy Nelson

From: Caitlin Murray <Caitlin.Murray@minterellison.com>
Sent: Monday, 14 March 2022 9:52 AM
To: Melissa Passarelli; Andrew Clarke
Cc: Sazz Nasimi; Alexandra Lawrence; Candy Nelson; Mackenzie Preston; Michael Hughes; Alana Galasso; Simon Brandis; Claire Latham; Kate Cockburn; Caitlin Murray
Subject: RE: Controlled Monies Accounts [MADG-CURRENT_MATTERS.18091.047678]

Dear Melissa

Please arrange for the forms to me sent to me in our Sydney office and we will arrange for two partners to be the signatories.

Kind regards
Caitlin

Caitlin Murray

Partner

T +61 2 9921 4279 M +61 422 977 971

caitlin.murray@minterellison.com

MinterEllison Governor Macquarie Tower 1 Farrer Place Sydney NSW 2000

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Candy Nelson

From: Andrew Clarke <Andrew.Clarke@minterellison.com>
Sent: Wednesday, 23 March 2022 4:51 PM
To: Melissa Passarelli
Cc: Caitlin Murray; Sazz Nasimi; Alexandra Lawrence; Candy Nelson; Mackenzie Preston; Michael Hughes; Alana Galasso; Simon Brandis; Claire Latham; Kate Cockburn
Subject: RE: Controlled Monies Accounts [MADG-CURRENT_MATTERS.18091.047678] [ME-ME.FID6264995]
Attachments: Notice of Authority.PDF

Dear Ms Passarelli

We confirm receipt of the Notice of Authority with respect to the controlled monies account signed by two partners of your firm and **attach** a scanned copy of the form also signed by two partners of our firm.

We will send the original to your office marked to your attention by express post.

Regards
Andrew

Andrew Clarke
Associate
T +61 2 9921 8514 M + 61 475 670 974
andrew.clarke@minterellison.com
MinterEllison Governor Macquarie Tower 1 Farrer Place Sydney NSW 2000
minterellison.com [Follow us on LinkedIn and Twitter](#)



Candy Nelson

From: Melissa Passarelli <Melissa.Passarelli@madgwicks.com.au>
Sent: Tuesday, 5 April 2022 3:34 PM
To: Andrew Clarke
Cc: Sazz Nasimi; Alexandra Lawrence; Caitlin Murray; Candy Nelson; Michael Hughes; Alana Galasso; Simon Brandis; Claire Latham; Kate Cockburn
Subject: FW: Controlled Monies Accounts [ME-ME.FID6264995] [MADG-CURRENT_MATTERS.18091.047678]
Attachments: Notice of Authority.PDF

Dear Mr Clarke

We have now received the original form and provided it to Westpac.

We are informed by Westpac that they require the 8 digit customer numbers of the signatories from your firm in order to assist in the relevant identification process. If the signatories do not have a CRN then Westpac requires their residential address.

Could you please provide this information by return email.

Regards

Melissa Passarelli
Associate

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LAWYERS

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T: +61 3 9242 4780 E: Melissa.Passarelli@madgwicks.com.au

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Security Warning: We take cyber security risks seriously. Please confirm any bank transfer details by phone directly before making a payment.

Candy Nelson

From: Melissa Passarelli <Melissa.Passarelli@madgwicks.com.au>
Sent: Wednesday, 20 April 2022 5:15 PM
To: Andrew Clarke
Cc: Sazz Nasimi; Alexandra Lawrence; Candy Nelson; Caitlin Murray; Michael Hughes; Alana Galasso; Simon Brandis; Claire Latham; Kate Cockburn
Subject: RE: Controlled Monies Accounts [ME-ME.FID6264995] [MADG-CURRENT_MATTERS.18091.047678]

Dear Mr Clarke

We refer to our below email and not we have not received a response.

We request that you please provide the details requested as a matter of *urgency*.

Regards

Melissa Passarelli
Associate

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T: +61 3 9242 4780 E: Melissa.Passarelli@madgwicks.com.au

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Candy Nelson

From: Caitlin Murray <Caitlin.Murray@minterellison.com>
Sent: Thursday, 21 April 2022 4:56 PM
To: Melissa Passarelli; Andrew Clarke
Cc: Sazz Nasimi; Alexandra Lawrence; Candy Nelson; Michael Hughes; Alana Galasso; Simon Brandis; Claire Latham; Kate Cockburn; Caitlin Murray
Subject: RE: Controlled Monies Accounts [ME-ME.FID6264995] [MADG-CURRENT_MATTERS.18091.047678]

Melissa

The MinterEllison partner verification process has been completed directly with Westpac and your firm's relationship partner.

In those circumstances, we are advised that there is no requirement for CRNs or residential addresses to be provided and that the words "Provided to banker" should be inserted in the 8 digit customer number field for each of Michael and James.

Please let me know if there is any issue regarding this.

Regards
Caitlin

Caitlin Murray

Partner

T +61 2 9921 4279 M +61 422 977 971

caitlin.murray@minterellison.com

MinterEllison Governor Macquarie Tower 1 Farrer Place Sydney NSW 2000

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Candy Nelson

From: Alexandra Lawrence <Alexandra.Lawrence@madgwicks.com.au>
Sent: Monday, 30 May 2022 10:38 AM
To: Caitlin Murray; Melissa Passarelli; Andrew Clarke
Cc: Sazz Nasimi; Candy Nelson; Michael Hughes; Alana Galasso; Simon Brandis; Claire Latham; Kate Cockburn
Subject: RE: Controlled Monies Accounts and Legal Fees [ME-ME.FID6264995] [MADG-CURRENT_MATTERS.18091.047678]
Attachments: Transaction Listing 667565.pdf

Dear Ms Murray,

We understand that on Friday our clients' respective counsel discussed the release of frozen funds for Mr Tesoriero's legal expenses.

Mr Tesoriero's actual and anticipated legal fees as discussed between counsel are outlined below:

Legal costs

To end of March (actual):	\$476k
April (actual):	\$70k
Total to date:	\$546k
Reply, discovery, lay evidence (estimate):	\$467k
Experts (estimate):	\$370k
Trial prep (estimate—2 weeks, 2 counsel + solicitors):	\$155k
Trial (estimate—3 x 6 day weeks, 2 counsel + solicitors):	\$383k
Total future:	\$1.32m

We also confirm that, to date, only \$180k has been paid towards Mr Tesoriero's legal expenses.

Could you please confirm by no later than **4:00pm Tuesday 31 May 2022** that your client now agrees to:

- (a) the immediate release of \$270k from the controlled monies account (being the amount remaining in the existing cap);
- (b) a revised cap of \$1.86m in the freezing orders; and
- (c) a further release to cover the shortfall in actual costs once the cap is increased.

We would also like to reach an agreement on the process for the release of legal funds going forward.

We note for completeness that:

- the above figures do not include any allowance for Fortis Law's fees, which are the subject of an ongoing taxation. Once the amount of those fees is confirmed, we propose that the cap be increased, and funds be released, accordingly; and

- Mr Tesoriero intends to cover legal fees for related matters, such as resisting the winding up of his related entities and the management of the Fortis taxation process, from funds released in accordance with the freezing orders.

In the absence of agreement, we are instructed to make an application to the Court seeking:

- (a) a revised cap for legal fees under the freezing orders; and
- (b) the immediate release of funds to cover the actual costs to date,

and will rely on this correspondence on the question of costs.

In the meantime, please see **attached** the transaction listing showing that the proceeds from the sale of 23 Margaret Street have been paid into the controlled monies account.

Mr Tesoriero otherwise reserve all rights in this matter.

Please don't hesitate to contact us with any queries.

Kind regards,

Alexandra Lawrence

Lawyer

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T: +61 3 9242 4720 E: Alexandra.Lawrence@madgwicks.com.au

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Westpac Banking Corporation
ABN 33 007 457 141

Printed:17/05/2022 09:47:56 EST

BUSINESS ONE FLEXI 033003 667565

Branch Name: 520 COLLINS STREET
Current Balance: \$ 1,340,866.65
Available Funds: \$ 1,340,866.65

Transactions

Date	Description	Withdrawals	Deposits	Running Balance
16/05/2022	DEPOSIT 3022104 COURT ORDER FUNDS		\$ 1,340,866.65	\$ 1,340,866.65

Things you should know

1. Running balance means the balance of a customer's account, based on the deposits and withdrawals we've recorded on the account at a particular point in time.

2. This page is current as at 17/05/2022 09:55:43 AEST. This is not an official statement and is subject to change.

Candy Nelson

From: Michael Hughes <Michael.Hughes@minterellison.com>
Sent: Monday, 30 May 2022 4:43 PM
To: Alexandra Lawrence
Cc: Sazz Nasimi; Candy Nelson; Alana Galasso; Simon Brandis; Claire Latham; Kate Cockburn; Caitlin Murray; Melissa Passarelli; Andrew Clarke
Subject: RE: Controlled Monies Accounts and Legal Fees [MADG-CURRENT_MATTERS.18091.047678] [ME-ME.FID6264995]

Dear Ms Lawrence

We refer to the below email, and the discussion which we understand took place between counsel on Friday 27 May 2022.

We will provide you a response once our client has the benefit of our advice and they have given their instructions as soon as possible, but it will not be before the self-imposed deadline of 4 pm tomorrow, 31 May, noting especially the lengthy period in which you have had the opportunity to put forward your proposals.

At an initial level, there are obvious gaps in the information you have provided as to which we will write to you, separately.

Further our client which has suffered very substantial losses and is obviously concerned that property and assets over which it asserts proprietary claims should not be eroded, in the expenditure of legal costs, when your client has failed to demonstrate that he does not have access to his own and other funds from which they can be paid, all of which will need to be taken into account.

Best regards
Michael

Michael Hughes

Partner

T +61 2 9921 4647 M +61 411 263 387

michael.hughes@minterellison.com

MinterEllison Governor Macquarie Tower 1 Farrer Place Sydney NSW 2000

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Candy Nelson

From: Kate Cockburn <Kate.Cockburn@minterellison.com>
Sent: Thursday, 2 June 2022 12:04 PM
To: Alexandra Lawrence; Sazz Nasimi; Melissa Passarelli
Cc: Caitlin Murray; Michael Hughes; Andrew Clarke; Simon Brandis; Alana Galasso; Michael Swain; Claire Latham
Subject: RE: Westpac Banking Corporation & Anor v Vince Tesoriero & Ors [MADG-CURRENT_MATTERS.18091.047678] [ME-ME.FID6264995]
Attachments: L - Madgwicks 01.06.22.PDF

Dear Ms Lawrence

Please find attached our letter of today's date.

Kind regards

Kate

Kate Cockburn

Lawyer

T +61 2 9921 4304 M +61 421 169 706

kate.cockburn@minterellison.com

MinterEllison Governor Macquarie Tower 1 Farrer Place Sydney NSW 2000

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MinterEllison.

2 June 2022

BY EMAIL: Sazz.Nasimi@madgwicks.com.au

Sazz Nasimi
Partner
Madgwicks Lawyers
Level 6, 140 William Street
Melbourne VIC 3000

Dear Mr Nasimi

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

We refer to:

1. the email from Alexandra Lawrence in which your client seeks our clients' consent to:
 - (a) the immediate release of \$270k from the controlled monies account (being the amount remaining in the existing cap);
 - (b) a revised cap of \$1.86m in the freezing orders; and
 - (c) a further release from the controlled monies account to cover the shortfall in actual costs once the cap is increased; and
2. our email to you of 30 May 2022.

The freezing order made against Mr Tesoriero on 2 July 2021 (**Freezing Order**), as varied, including by order made on 12 November 2021, provides that your client is not prohibited from paying up to the sum of \$450,000 until 10 March 2022 for reasonable legal fees. We understand from your email that Mr Tesoriero has incurred the sum of \$546,000 in legal fees to date, which amount does not include any legal fees which Mr Tesoriero may be liable to pay his former firm, Fortis Law. We also understand that Mr Tesoriero has paid the sum of \$180,000 towards legal expenses incurred to date and has not paid amounts that may be owing to Fortis Law.

At the outset, we accept that a variation of the Freezing Orders will be required to address further legal expenses and note that whilst our clients are prepared to be reasonable in respect of Mr Tesoriero's request and to take a pragmatic approach to any proposed variation, they have suffered very substantial losses and, in those circumstances, are concerned that property and assets over which they assert proprietary claims should not be eroded in the expenditure of legal costs. To the extent that a proprietary interest is claimed over funds, our clients will oppose those funds being used for the payment of legal expenses. This is particularly so where Mr Tesoriero has failed to demonstrate that he does not have access to his own and other funds from which his legal expenses can be paid.

That said, we are instructed that our clients consent to the release of the sum of \$270,000 from the proceeds of the sale of property at 23 Margaret Street, Rozelle being the funds held in the controlled account with account number 033003 667565 (**CMA**) for the purpose of being applied to Mr Tesoriero's reasonable legal expenses, provided this is also consented to by SMBC who we understand also maintains a proprietary claim in connection with these monies, as outlined below. The release of this sum will not erode any funds over which our clients have a proprietary claim. For the avoidance of any doubt, payment of this amount by Mr Tesoriero will exhaust the current limit of legal fees under the Freezing Orders as varied by order made on 12 November 2021.

Level 40 Governor Macquarie Tower 1 Farrer Place Sydney
GPO Box 521 Sydney NSW 2001 Australia DX 117 Sydney
T +61 2 9921 8888 F +61 2 9921 8123 minterellison.com

ME_198984968_3

As to the balance of Mr Tesoriero's request, we make the following comments.

1. As to the estimate of legal fees provided, we note the following matters:
 - (a) no breakdown in relation to the funds incurred to date has been provided, including whether those fees relate to applications made in connection with sale of the Bulkara properties and the Mangusta "XOXO" or legal fees incurred in preparing the defence filed by other respondents in the proceeding for which your firm acts. Please provide us with a detailed breakdown in relation to the costs incurred to date, including as to whether they relate to costs incurred in the defence of these proceedings, the nature of the task (for example, preparing defences) and on behalf of which respondent they were incurred;
 - (b) without being provided with the basis upon which the estimate for future legal expenses has been calculated, our clients cannot properly consider whether they are prepared to consent to an increase in the cap in the quantum you have proposed. Please provide us with a detailed breakdown as to how the costs have been calculated for our clients' consideration;
 - (c) we do not see that there is any cause for expert evidence in this matter. To the extent that you consider that there will be such a need, then please let us know to what issue in the proceedings that expert evidence is anticipated to relate; and
 - (d) your estimate is on the basis that both counsel and solicitors will be working 6 days a week full time during the course of the hearing, a position we consider unlikely particularly given that part of our clients' case concerns other respondents whose interests entirely diverge from that of Mr Tesoriero. We invite you to revisit the quantum sought in connection with the costs of the hearing.
2. Mr Tesoriero has not provided any evidence that he does not have access to other funds from which to meet his legal expenses. In this regard, we note that in Mr Tesoriero's affidavit of 21 July 2021 (**July Affidavit**), he made reference to 16 bank accounts which he had "control over": see paragraph [4] and Annexure B, including accounts with "ANZ", "NAB" and "CBA". In his affidavit of 19 October 2021 (**October Affidavit**), he deposed (in paragraph 4) that he has "*visibility on 16 accounts which were for various business matters, though I believe that I may have up to 30 accounts with NAB*". At the time of swearing that affidavit in October, he said that there was \$255,055.06 in various accounts, and listed 18 accounts held with NAB and their account balances. That list included accounts not referred to in the July Affidavit. No information was set out in the October Affidavit as to the status of the accounts held with CBA or ANZ referred to in the July Affidavit.
3. Despite multiple requests, your client has not provided any additional information as to the other accounts nor has he otherwise established that there are insufficient funds within those accounts from which he can meet his ongoing obligations. Further, no explanation has been provided as to the \$255,055 in funds disclosed in the October Affidavit. If your client were to bring an application to the Court seeking the variations referred to in your email, he would necessarily need to satisfy the Court that he does not have access to any alternate sources of funds from which his legal expenses could be satisfied.
4. In those circumstances, to enable us to obtain instructions as to your request, please provide us:
 - (a) an updated statement of assets and liabilities for Mr Tesoriero and those entities controlled by him;
 - (b) statements of account for all relevant bank accounts including those in Mr Tesoriero's name and those that he controls (being at least those accounts identified in the July and October Affidavits). We presume that Mr Tesoriero will be able to liaise with the relevant bank to obtain a copy of the most recent statement for each account to the extent that he does not have a copy himself;
 - (c) confirmation as to whether it is proposed that the exception for legal fees will also relate to legal fees incurred and to be incurred by other respondents for which your firm acts in defence of the proceedings;
 - (d) confirmation as to what income is received by Mr Tesoriero and the entities he controls.

Finally, we note that to the extent that SMBC asserts that it has a proprietary claim in relation to funds, Mr Tesoriero will need to seek the consent of SMBC for the release of funds and consent on the part of our clients cannot be taken to be consent from SMBC. In this respect we note that SMBC has a claim against 23 Margaret Street Pty Limited and it may be necessary for Mr Tesoriero to seek consent from SMBC for the release of the funds in the CMA.

Once we receive the above information, we will seek our clients' instructions as to the balance of your client's requests.

All of our clients' rights are expressly reserved.

Yours faithfully
MinterEllison



Caitlin Murray
Partner

Contact: Caitlin Murray T: +61 2 9921 4279
caitlin.murray@minterellison.com
Partner: Caitlin Murray T: +61 2 9921 4279
OUR REF: 1353397

Candy Nelson

From: Melissa Passarelli
Sent: Tuesday, 14 June 2022 3:04 PM
To: Kate Cockburn; Caitlin Murray; Michael Hughes; Andrew Clarke; Simon Brandis; Alana Galasso; Michael Swain; Claire Latham
Cc: Sazz Nasimi; Alexandra Lawrence
Subject: Controlled Monies Account - Westpac Banking Corporation & Anor v Vince Tesoriero & Ors [MADG-CURRENT_MATTERS.18091.047678]
Attachments: Westpac (002).docx

Dear Colleagues

We refer to your letter of 2 June 2022 whereby you confirm that your clients consent to the withdrawal of the sum of \$270,000 from the proceeds of the sale of the property at 23 Margaret Street, Rozelle.

Westpac as the bank which holds the controlled monies account, has confirmed that the **attached** letter must be signed by the persons who signed the initial form from MinterEllison and Madgwicks in order for any monies to be withdrawn.

Accordingly, could you please have the attached letter signed by the relevant partners from MinterEllison and post the original letter to the below address by express post.

Madgwicks Lawyers
Attention: Melissa Passarelli
Level 6
140 William Street
Melbourne VIC 3000

We are otherwise in the process of responding to the balance of your letter of 2 June 2022.

Regards

Melissa Passarelli
Senior Associate

MADGWICKS
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T: +61 3 9242 4780 E: Melissa.Passarelli@madgwicks.com.au

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LAWYERS

Westpac
Level 9
150 Collins Street
Melbourne
VIC 3000

Date: 14 June 2022

Author: Stephen Doherty

Dear Sirs,

Madgwicks & Minter Ellison ATF Vincenzo Tesoriero – Controlled Money Account - 667565

Please withdraw funds in the amount of \$270,000.00 from account 667565, BSB 033 003 and disburse to Madgwicks Trust Account number 256 563 BSB 033 003

Yours faithfully
MINTERELLISON

PARTNER

PARTNER

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Madgwicks

Candy Nelson

From: Caitlin Murray <Caitlin.Murray@minterellison.com>
Sent: Tuesday, 14 June 2022 3:24 PM
To: Melissa Passarelli; Kate Cockburn; Michael Hughes; Andrew Clarke; Simon Brandis; Alana Galasso; Michael Swain; Claire Latham
Cc: Sazz Nasimi; Alexandra Lawrence; Caitlin Murray
Subject: RE: Controlled Monies Account - Westpac Banking Corporation & Anor v Vince Tesoriero & Ors [MADG-CURRENT_MATTERS.18091.047678]

Dear Melissa

Our clients' consent to the withdrawal of the \$270,000 from the CMA account for the purpose of those funds being applied to Mr Tesoriero's reasonable legal expenses, was conditional upon the consent of SMBC Leasing and Finance Inc (SMBC), who we understand also maintains a proprietary claim in connection with the funds within the CMA, being obtained.

We understand that your firm is yet to contact the solicitors for SMBC to seek their client's consent.

Please let us have confirmation of the consent of SMBC to the proposed release and we will arrange to sign and return the letter.

Regards
Caitlin

Caitlin Murray

Partner

T +61 2 9921 4279 M +61 422 977 971

caitlin.murray@minterellison.com

MinterEllison Governor Macquarie Tower 1 Farrer Place Sydney NSW 2000

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Candy Nelson

From: Alexandra Lawrence <Alexandra.Lawrence@madgwicks.com.au>
Sent: Thursday, 16 June 2022 6:20 PM
To: myiasemides@jonesday.com
Cc: rdobson@jonesday.com; EXT-ForumGroupJD@groups.jonesday.com; Sazz Nasimi; Melissa Passarelli; 047678 Tesoriero _ Dispute against Westpac Banking Corporation E_Mail
Subject: RE: SMBC Leasing & Finance Inc. v Forum Enviro (NSD681/2021) [IMAN-CURRENT_MATTERS.FID668654]
Attachments: L - Madgwicks 01.06.22.PDF

Dear Ms Yiasemides,

We refer to the freezing order dated 2 July 2021 made against our client, Mr Vincenzo Tesoriero (most recently varied as of 12 November 2021) in the Westpac proceeding.

Paragraph 10(b) of the freezing order states that '*This order does not prohibit... (b) paying up to the sum of \$450,000 until 10 March 2022 on your reasonable legal expenses*'.

We **attach** correspondence from MinterEllison confirming that despite the above order allowing the release of funds, Westpac requires your consent to the release of funds for our client's legal and personal expenses.

Whilst the orders do not require your consent, out of an abundance of caution we seek your consent.

Please do not hesitate to contact our office with any queries.

Kind regards,

Alexandra Lawrence
Associate

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MinterEllison.

2 June 2022

BY EMAIL: Sazz.Nasimi@madgwicks.com.au

Sazz Nasimi
Partner
Madgwicks Lawyers
Level 6, 140 William Street
Melbourne VIC 3000

Dear Mr Nasimi

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

We refer to:

1. the email from Alexandra Lawrence in which your client seeks our clients' consent to:
 - (a) the immediate release of \$270k from the controlled monies account (being the amount remaining in the existing cap);
 - (b) a revised cap of \$1.86m in the freezing orders; and
 - (c) a further release from the controlled monies account to cover the shortfall in actual costs once the cap is increased; and
2. our email to you of 30 May 2022.

The freezing order made against Mr Tesoriero on 2 July 2021 (**Freezing Order**), as varied, including by order made on 12 November 2021, provides that your client is not prohibited from paying up to the sum of \$450,000 until 10 March 2022 for reasonable legal fees. We understand from your email that Mr Tesoriero has incurred the sum of \$546,000 in legal fees to date, which amount does not include any legal fees which Mr Tesoriero may be liable to pay his former firm, Fortis Law. We also understand that Mr Tesoriero has paid the sum of \$180,000 towards legal expenses incurred to date and has not paid amounts that may be owing to Fortis Law.

At the outset, we accept that a variation of the Freezing Orders will be required to address further legal expenses and note that whilst our clients are prepared to be reasonable in respect of Mr Tesoriero's request and to take a pragmatic approach to any proposed variation, they have suffered very substantial losses and, in those circumstances, are concerned that property and assets over which they assert proprietary claims should not be eroded in the expenditure of legal costs. To the extent that a proprietary interest is claimed over funds, our clients will oppose those funds being used for the payment of legal expenses. This is particularly so where Mr Tesoriero has failed to demonstrate that he does not have access to his own and other funds from which his legal expenses can be paid.

That said, we are instructed that our clients consent to the release of the sum of \$270,000 from the proceeds of the sale of property at 23 Margaret Street, Rozelle being the funds held in the controlled account with account number 033003 667565 (**CMA**) for the purpose of being applied to Mr Tesoriero's reasonable legal expenses, provided this is also consented to by SMBC who we understand also maintains a proprietary claim in connection with these monies, as outlined below. The release of this sum will not erode any funds over which our clients have a proprietary claim. For the avoidance of any doubt, payment of this amount by Mr Tesoriero will exhaust the current limit of legal fees under the Freezing Orders as varied by order made on 12 November 2021.

Level 40 Governor Macquarie Tower 1 Farrer Place Sydney
GPO Box 521 Sydney NSW 2001 Australia DX 117 Sydney
T +61 2 9921 8888 F +61 2 9921 8123 minterellison.com

As to the balance of Mr Tesoriero's request, we make the following comments.

1. As to the estimate of legal fees provided, we note the following matters:
 - (a) no breakdown in relation to the funds incurred to date has been provided, including whether those fees relate to applications made in connection with sale of the Bulkara properties and the Mangusta "XOXO" or legal fees incurred in preparing the defence filed by other respondents in the proceeding for which your firm acts. Please provide us with a detailed breakdown in relation to the costs incurred to date, including as to whether they relate to costs incurred in the defence of these proceedings, the nature of the task (for example, preparing defences) and on behalf of which respondent they were incurred;
 - (b) without being provided with the basis upon which the estimate for future legal expenses has been calculated, our clients cannot properly consider whether they are prepared to consent to an increase in the cap in the quantum you have proposed. Please provide us with a detailed breakdown as to how the costs have been calculated for our clients' consideration;
 - (c) we do not see that there is any cause for expert evidence in this matter. To the extent that you consider that there will be such a need, then please let us know to what issue in the proceedings that expert evidence is anticipated to relate; and
 - (d) your estimate is on the basis that both counsel and solicitors will be working 6 days a week full time during the course of the hearing, a position we consider unlikely particularly given that part of our clients' case concerns other respondents whose interests entirely diverge from that of Mr Tesoriero. We invite you to revisit the quantum sought in connection with the costs of the hearing.
2. Mr Tesoriero has not provided any evidence that he does not have access to other funds from which to meet his legal expenses. In this regard, we note that in Mr Tesoriero's affidavit of 21 July 2021 (**July Affidavit**), he made reference to 16 bank accounts which he had "control over": see paragraph [4] and Annexure B, including accounts with "ANZ", "NAB" and "CBA". In his affidavit of 19 October 2021 (**October Affidavit**), he deposed (in paragraph 4) that he has "*visibility on 16 accounts which were for various business matters, though I believe that I may have up to 30 accounts with NAB*". At the time of swearing that affidavit in October, he said that there was \$255,055.06 in various accounts, and listed 18 accounts held with NAB and their account balances. That list included accounts not referred to in the July Affidavit. No information was set out in the October Affidavit as to the status of the accounts held with CBA or ANZ referred to in the July Affidavit.
3. Despite multiple requests, your client has not provided any additional information as to the other accounts nor has he otherwise established that there are insufficient funds within those accounts from which he can meet his ongoing obligations. Further, no explanation has been provided as to the \$255,055 in funds disclosed in the October Affidavit. If your client were to bring an application to the Court seeking the variations referred to in your email, he would necessarily need to satisfy the Court that he does not have access to any alternate sources of funds from which his legal expenses could be satisfied.
4. In those circumstances, to enable us to obtain instructions as to your request, please provide us:
 - (a) an updated statement of assets and liabilities for Mr Tesoriero and those entities controlled by him;
 - (b) statements of account for all relevant bank accounts including those in Mr Tesoriero's name and those that he controls (being at least those accounts identified in the July and October Affidavits). We presume that Mr Tesoriero will be able to liaise with the relevant bank to obtain a copy of the most recent statement for each account to the extent that he does not have a copy himself;
 - (c) confirmation as to whether it is proposed that the exception for legal fees will also relate to legal fees incurred and to be incurred by other respondents for which your firm acts in defence of the proceedings;
 - (d) confirmation as to what income is received by Mr Tesoriero and the entities he controls.

Finally, we note that to the extent that SMBC asserts that it has a proprietary claim in relation to funds, Mr Tesoriero will need to seek the consent of SMBC for the release of funds and consent on the part of our clients cannot be taken to be consent from SMBC. In this respect we note that SMBC has a claim against 23 Margaret Street Pty Limited and it may be necessary for Mr Tesoriero to seek consent from SMBC for the release of the funds in the CMA.

Once we receive the above information, we will seek our clients' instructions as to the balance of your client's requests.

All of our clients' rights are expressly reserved.

Yours faithfully
MinterEllison



Caitlin Murray
Partner

Contact: Caitlin Murray T: +61 2 9921 4279
caitlin.murray@minterellison.com
Partner: Caitlin Murray T: +61 2 9921 4279
OUR REF: 1353397

Candy Nelson

From: Shanahan, Lucy J. <lshanahan@jonesday.com>
Sent: Wednesday, 22 June 2022 9:54 AM
To: Alexandra Lawrence
Cc: Sazz Nasimi; Melissa Passarelli; 047678 Tesoriero _ Dispute against Westpac Banking Corporation E_Mail; Caitlin Murray; Michael.Hughes@minterellison.com; PROJECT OLYMPUS; Dobson, Roger; Yiasemides, Maria; EXT ForumGroupJD
Subject: RE: SMBC Leasing & Finance Inc. v Forum Enviro (NSD681/2021) [IMAN-CURRENT_MATTERS.FID668654]
Attachments: Interlocutory Application - 17 June 2022(4849547.2).pdf

Dear Ms Lawrence

As you are aware, SMBC L&F asserts a proprietary claim over the proceeds of sale of the property at 23 Margaret Street. Notwithstanding this, we are instructed that our client will consent to Order 2 of the orders sought in the interlocutory application dated 17 June 2022, to the extent that Order 2 relates to the release of funds from the proceeds of the Margaret Street sale in the amount of \$270,000, for the payment of your client's reasonable legal expenses as referred to in the freezing orders. Our client does not consent to the funds being used for Mr Tesoriero's personal expenses, as your email below suggests.

Our client does not agree to the release of any other funds held by the external administrators where it asserts a proprietary claim over those funds.

Kind regards
Lucy

Lucy Shanahan

Associate

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Aurora Place

Level 41, 88 Phillip Street

Sydney, NSW 2000 Australia

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Mobile +61.405.352.766

Candy Nelson

From: Melissa Passarelli <Melissa.Passarelli@madgwicks.com.au>
Sent: Wednesday, 22 June 2022 10:15 AM
To: Caitlin Murray
Cc: Sazz Nasimi; Alexandra Lawrence; Kate Cockburn; Michael Hughes; Andrew Clarke; Simon Brandis; Alana Galasso; Michael Swain; Claire Latham
Subject: RE: Controlled Monies Account - Westpac Banking Corporation & Anor v Vince Tesoriero & Ors [MADG-CURRENT_MATTERS.18091.047678]
Attachments: RE: SMBC Leasing & Finance Inc. v Forum Enviro (NSD681/2021) [IMAN-CURRENT_MATTERS.FID668654]; Westpac (002).docx

Dear Caitlin

We refer to the below correspondence and the **attached** correspondence received on behalf of SMBC which we note you were copied into.

In light of this correspondence, we ask that you organise the *urgent* execution and delivery of the letter provided to you on 14 June 2022 (attached again for convenience).

Regards

Melissa Passarelli
Senior Associate

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T: +61 3 9242 4780 E: Melissa.Passarelli@madgwicks.com.au

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Candy Nelson

From: Melissa Passarelli <Melissa.Passarelli@madgwicks.com.au>
Sent: Friday, 24 June 2022 12:21 PM
To: Caitlin Murray
Cc: Sazz Nasimi; Alexandra Lawrence; Kate Cockburn; Michael Hughes; Andrew Clarke; Simon Brandis; Alana Galasso; Michael Swain; Claire Latham
Subject: Urgent - Controlled Monies Account - Westpac Banking Corporation & Anor v Vince Tesoriero & Ors [MADG-CURRENT_MATTERS.18091.047678]
Attachments: Westpac (002).docx
Importance: High

Dear Caitlin

We refer to the below email.

Could you please confirm that the **attached** has been executed and is on its way to Madgwicks via express post.

We have numerous disbursements on Mr Teseriero's account, some which have exceeded 90 days. As a result, our firm has received final demands which, failing payment being made imminently, will result in the issuing of legal proceedings. Any delay in releasing the funds which have been agreed to be released to our office is therefore unacceptable.

We look forward to your urgent response.

Regards

Melissa Passarelli
Senior Associate

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Candy Nelson

From: Caitlin Murray <Caitlin.Murray@minterellison.com>
Sent: Friday, 24 June 2022 12:55 PM
To: Melissa Passarelli
Cc: Sazz Nasimi; Alexandra Lawrence; Kate Cockburn; Michael Hughes; Andrew Clarke; Simon Brandis; Alana Galasso; Michael Swain; Claire Latham; Caitlin Murray
Subject: RE: Urgent - Controlled Monies Account - Westpac Banking Corporation & Anor v Vince Tesoriero & Ors [MADG-CURRENT_MATTERS.18091.047678]

Ms Passarelli

It is in the process of being signed and will be posted later today.

Regards
Caitlin

Caitlin Murray

Partner

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caitlin.murray@minterellison.com

MinterEllison Governor Macquarie Tower 1 Farrer Place Sydney NSW 2000

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Candy Nelson

From: Melissa Passarelli
Sent: Tuesday, 28 June 2022 3:58 PM
To: Shanahan, Lucy J.
Cc: Sazz Nasimi; Alexandra Lawrence; 047678 Tesoriero _ Dispute against Westpac Banking Corporation E_Mail; Caitlin Murray; Michael.Hughes@minterellison.com; PROJECT OLYMPUS; Prestwich, Chris; kirsty.prinsloo@allens.com.au; Dobson, Roger; Yiasemides, Maria; EXT ForumGroupJD
Subject: RE: SMBC Leasing & Finance Inc. v Forum Enviro (NSD681/2021) [IMAN-CURRENT_MATTERS.FID668654]

Dear Ms Shanahan

We will be shortly filing submissions which will provide a response to your below query.

Regards

Melissa Passarelli
Senior Associate

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From: Shanahan, Lucy J. <lshanahan@jonesday.com>
Sent: Tuesday, 28 June 2022 2:05 PM
To: Alexandra Lawrence <Alexandra.Lawrence@madgwicks.com.au>
Cc: Sazz Nasimi <Sazz.Nasimi@madgwicks.com.au>; Melissa Passarelli <Melissa.Passarelli@madgwicks.com.au>; 047678 Tesoriero _ Dispute against Westpac Banking Corporation E_Mail <{F668654}.Current_Matters@madgwicks.imanagework-au.com>; Caitlin Murray <Caitlin.Murray@minterellison.com>; Michael.Hughes@minterellison.com; PROJECT OLYMPUS <PROJECTOLYMPUS@minterellison.com>; Prestwich, Chris <Chris.Prestwich@allens.com.au>; kirsty.prinsloo@allens.com.au; Dobson, Roger <rdobson@jonesday.com>; Yiasemides, Maria <myiasemides@jonesday.com>; EXT ForumGroupJD <EXT-ForumGroupJD@groups.jonesday.com>
Subject: RE: SMBC Leasing & Finance Inc. v Forum Enviro (NSD681/2021) [IMAN-CURRENT_MATTERS.FID668654]

Dear Ms Lawrence

We refer to our email of 22 June 2022 below and to the interlocutory application and supporting affidavit filed by your client on 17 June 2022.

Order 2 of that application seeks access to funds paid into Court and/or the controlled monies account set up pursuant to Order 4 made by Lee J on 9 February 2022. As you are aware, the majority of those funds are the subject of proprietary claims made by SMBC L&F and others. As we noted in our email of 22 June 2022, our client objects to the release of any funds to your client to the extent they are the subject of a proprietary claim by our client.

In order that we may prepare for the hearing on Thursday, 30 June 2022, please let us know the basis on which your client asserts an entitlement to access funds that are the subject of a proprietary claim. Please note that any failure to respond will be noted to the Court on Thursday, including in relation to the question of our client's costs.

Kind regards
Lucy

Lucy Shanahan

Associate

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Justin Kang
Dentons
77 Castlereagh Street
Sydney NSW 2000

Date: 3 June 2022
File No: 047678
Author: Alexandra Lawrence
Partner: Sazz Nasimi

By email: Justin.kang@dentons.com

Dear Mr Kang

5 Bulkara Street, Wagstaffe NSW 2257 (“the Property”)

We refer to our previous correspondence confirming that our client no longer seeks to restrain the sale of the Property. That said, we write this letter seeking confirmation of a number of matters in respect of the imminent sale of the Property.

Details of sale

Please confirm the following details of the proposed sale:

- (a) the proposed sale price;
- (b) the identity of the purchaser; and
- (c) the settlement date.

Application of proceeds

Other than NAB, there are a number of entities that claim an interest in the proceeds from the sale of the Property, including Aksara Holdings Pty Ltd (**Aksara**) pursuant to an equitable mortgage, and Westpac Banking Corporation (**Westpac**) in respect of a proprietary claim, which our client disputes and which is the subject of Federal Court Proceeding NSD616/2021 (**Proceeding**).

Unlike, Westpac’s claim, we do not understand there to be any dispute as to the existence of Aksara’s equitable mortgage, which currently secures an amount of approximately \$5.5 million.

Once NAB’s registered mortgage has been discharged, our client considers that it is appropriate to apply the remaining proceeds from the sale of the Property to discharge Aksara’s equitable mortgage. To the extent that there are any remaining proceeds, our client considers that they should be paid into the existing controlled monies account controlled by our office and Westpac’s solicitors pending further Court orders.

We note that Westpac has asserted that its alleged proprietary interest takes priority over Aksara’s equitable mortgage. Aksara’s equitable mortgage is not in issue in the Proceeding, and Westpac



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has not articulated any basis for its asserted priority. We are not aware of any foundation for such a claim.

Please confirm that the proceeds of the sale of the Property will be applied as set out above.

The solicitors for Westpac, the solicitors for the liquidators of 5 Bulkara St Pty Ltd (in liquidation), and Mr Kabo of Aksara have been copied into this correspondence.

Should you have any queries, please do not hesitate to contact our office.

Yours faithfully

MADGWICKS



Sazz Nasimi
Partner

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



Alexandra Lawrence
Associate

T: 03 9242 4720
E: Alexandra.Lawrence@madgwicks.com.au

Copy to:

McTaggart, Caitlin Caitlin.McTaggart@allens.com.au;
Prinsloo, Kirsty Kirsty.Prinsloo@allens.com.au;
Prestwich, Chris Chris.Prestwich@allens.com.au ;
Murray, Caitlin Caitlin.Murray@minterellison.com;
Clarke, Andrew Andrew.Clarke@minterellison.com;
Kabo, Konfir Konfir.kabo@gmail.com.

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MinterEllison.

8 June 2022

Sazz Nasimi
Madgwicks Lawyers
Level 6
140 William Street
Melbourne VIC 3000

Dear Colleagues

5 Bulkara Street, Wagstaffe NSW 2257 (Property)

We refer to your letter to Dentons dated 3 June 2022 in relation to the sale of the Property, to which we were copied.

Our clients do not agree with, or consent to, your client's proposal that, once NAB's registered mortgage over the Property has been discharged, the remaining proceeds (**Proceeds**) be applied to discharge the equitable interest asserted by Aksara Holdings Pty Limited (**Aksara**).

In this regard:

1. Aksara's claimed interest in the Property is an equitable interest only.
2. As pleaded by our clients in the Federal Court of Australia proceedings (**Proceedings**) commenced against Forum Finance Pty Limited (In Liquidation) (**Forum Finance**) and others, our clients contend that Forum Finance fraudulently received a significant sum of funds from our clients.
3. Our clients have identified that the proceeds stolen from it can be traced into the purchase of the Property and to repayments made with respect to the registered mortgage over the Property, thereby creating a proprietary interest in the Property.
4. Our clients have identified funds traced to the Property prior to the creation of Aksara's claimed equitable interest. Our clients contend that their proprietary interest in the Property pre-dates any equitable interest claimed by Aksara.
5. It is well established that, in the circumstances of two competing equitable interests, the first in time must prevail.

In those circumstances, our client does not agree that it is appropriate to apply the Proceeds to discharge Aksara's claimed equitable mortgage and does not consent to any such distribution. Our clients maintain that the Proceeds should be paid into Court (or into a controlled moneys account held by the Liquidators) pending the determination of our clients' claims in the Proceedings.

Our clients reserve their position on the question of costs of any need to seek a determination as to the priority position as between our clients and Aksara.

We have copied Konfir Kabo of Aksara and the solicitors for NAB and the liquidators of 5 Bulkara Street Pty Limited (in liquidation) to this correspondence.

Yours faithfully
MinterEllison

Minter Ellison

Contact: Claire Latham
claire.latham@minterellison.com
Partner: Caitlin Murray
OUR REF: 1353397

Copy to: Konfir Kabo konfir.kabo@gmail.com
Justin Kang justin.kang@dentons.com
Chris Prestwich chris.prestwick@allens.com.au
Kirsty Prinsloo kirsty.prinsloo@allens.com.au

Candy Nelson

From: Kang, Justin <justin.kang@dentons.com>
Sent: Wednesday, 8 June 2022 2:45 PM
To: Claire Latham; Alexandra Lawrence; Sazz Nasimi; Melissa Passarelli; konfir.kabo@gmail.com; Prestwich, Chris; Prinsloo, Kirsty; caitlin.mctaggart@allens.com.au; forumallens@allens.com.au
Cc: Caitlin Murray; PROJECT OLYMPUS; Strack, Tamara; Canny, Elizabeth; Sharpe, David; Daher, Liliane; Geary, Matthew
Subject: 5 Bulkara Street, Wagstaffe NSW 2257 [DENTONS-Documents.FID10656073]
Attachments: 220602 Letter from Madgwicks to Dentons(4827789.4).pdf; Letter to Madgwicks 8 Jun 2022.PDF

Dear Colleagues

We refer to the **attached** letters from Madgwicks dated 3 June 2022 and Minter Ellison dated 8 June 2022.

By way of response:

- our clients do not propose to provide details of any prospective sale and we will advise once any exchange of contracts has occurred;
- it is not incumbent on our clients to decide between competing claims to any surplus from the sale;
- therefore, absent agreement between all claimants to any surplus, our clients intend to pay any surplus into Court.

Regards



Justin Kang

Partner

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Candy Nelson

From: Kang, Justin <justin.kang@dentons.com>
Sent: Monday, 20 June 2022 10:33 PM
To: Claire Latham; Alexandra Lawrence; Sazz Nasimi; Melissa Passarelli; konfir.kabo@gmail.com; Prestwich, Chris; Prinsloo, Kirsty; caitlin.mctaggart@allens.com.au; forumallens@allens.com.au
Cc: Caitlin Murray; PROJECT OLYMPUS; Strack, Tamara; Sharpe, David; Daher, Liliane; Geary, Matthew
Subject: RE: 5 Bulkara Street, Wagstaffe NSW 2257 [DENTONS-Documents.FID10656073]
Attachments: 220602 Letter from Madgwicks to Dentons(4827789.4).pdf; Letter to Madgwicks 8 Jun 2022.PDF; RE: Urgent - Re: 5&6 Bulkara Street, Wagstaffe [Allens-File-DMS.FID2091065] [MADG-CURRENT_MATTERS.18091.047678]

Dear Colleagues

We refer to the correspondence below and **attached**.

Our clients (**Agents**), as agents for National Australia Bank Ltd (**NAB**) as mortgagee, have now exchanged contracts for sale of 5 Bulkara Street, Wagstaffe, NSW.

Currently it is anticipated there will be a surplus remaining on settlement of that sale after payment of the amounts secured to NAB.

As previously indicated, the Agents propose to pay any surplus either as agreed between all claimants to that surplus, or otherwise into Court absent any such agreement.

It appears to our clients that the following parties assert (or might assert) a claim to any surplus:

- Aksara Holdings Pty Ltd (**Aksara**) - represented by Kabo Lawyers;
- Westpac Banking Corporation and Westpac New Zealand Limited (collectively **Westpac**) – represented by Minter Ellison;
- Jason Ireland & Jason Preston, McGrathNicol, as liquidators/receivers (**Receivers**) – represented by Allens.

While also noting Madgwicks' correspondence on behalf of Mr Vincenzo Frank Tesoriero (**Mr Tesoriero**), the Agents are not aware of any claim by Mr Tesoriero personally to any surplus to be realised from the sale of 5 Bulkara Street, Wagstaffe, NSW.

In that regard:

- Madgwicks' **attached** email of 27 May 2022 confirmed Mr Tesoriero would not be making any application to restrain the sale of 5 Bulkara Street, Wagstaffe, NSW;
- the assertion in Madgwicks' **attached** letter dated 2 June 2022 that Aksara should be paid after NAB (which we note is not agreed by Westpac), is a matter to be taken up by Aksara if it so decides – noting Aksara is separately represented by Kabo Lawyers;
- the various items of personal property referred to in the correspondence between Madgwicks and Allens are not included in the sale by the Agents (which pertains to the land at 5 Bulkara Street, Wagstaffe, NSW), and arrangements will need to be made to remove that personal property from 5 Bulkara Street, Wagstaffe, NSW before settlement of the Agents' sale;
- it is not apparent in any event what basis Mr Tesoriero would have to assert a claim to any surplus from the sale of 5 Bulkara Street, Wagstaffe, NSW.

If, however, Mr Tesoriero does assert a claim to any surplus from the sale of 5 Bulkara Street, Wagstaffe, NSW, then we ask that Madgwicks please confirm that to us by written reply **no later than 27 June 2022** (and in doing so that Madgwicks set out the nature and basis of any claim to the surplus asserted by Mr Tesoriero).

Unless we receive correspondence from Madgwicks on or before that date notifying any such claim by Mr Tesoriero, the Agents will assume and proceed on the basis that no such claim is made by Mr Tesoriero. In those circumstances, all further correspondence regarding disbursement of any surplus from 5 Bulkara Street, Wagstaffe, NSW will only be directed to Aksara, Westpac and the Receivers by their respective legal representatives.

Regards



Justin Kang

Partner

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Candy Nelson

From: Alexandra Lawrence <Alexandra.Lawrence@madgwicks.com.au>
Sent: Monday, 27 June 2022 5:11 PM
To: Kang, Justin; Claire Latham; Sazz Nasimi; Melissa Passarelli; konfir.kabo@gmail.com; Prestwich, Chris; Prinsloo, Kirsty; caitlin.mctaggart@allens.com.au; forumallens@allens.com.au
Cc: Caitlin Murray; PROJECT OLYMPUS; Strack, Tamara; Sharpe, David; Daher, Liliane; Geary, Matthew; 047678 Tesoriero _ Dispute against Westpac Banking Corporation E-Mail
Subject: RE: 5 Bulkara Street, Wagstaffe NSW 2257 [DENTONS-Documents.FID10656073] [IMAN-CURRENT_MATTERS.FID668654]

Dear Mr Kang,

We refer to your below email dated 20 June 2022.

As you are aware we act for numerous entities associated with Messrs V and G Tesoriero. One such entity is Tesoriero Investment Group Pty Ltd (**Tesoriero Investment**), which holds a beneficial interest in the trust which owns the property known as 5 Bulkara Stret Wagstaffe NSW 2257 (**5 Bulkara Property**).

Furthermore, our clients may also have an interest in the property by virtue of funds that they have contributed towards the purchase, maintenance or improvements to the Property. We are still investigating this but in any event our clients connection through Tesoriero Investments is sufficient to evidence an interest in the Property and therefore the proceeds from its imminent sale.

On the basis of the above, we ask that our client be included in any discussions and communications with respect to the Property and its proceeds. Further, our request is line with previous Court orders which have recognised our clients' interest in the property and the importance of our clients being kept informed of all dealings concerning the Property.

Kind regards,

Alexandra Lawrence
Associate

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