

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 18/07/2022 5:35:23 PM AEST and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

Details of Filing

Document Lodged:	Submissions
File Number:	NSD681/2021
File Title:	SMBC LEASING AND FINANCE, INC. ARBN 602 309 366 v FORUM ENVIRO (AUST) PTY LTD (VOLUNTARY ADMINISTRATORS APPOINTED) ACN 607 484 364 & ORS
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



Sia Lagos

Dated: 18/07/2022 5:45:29 PM AEST

Registrar

Important Information

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

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



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

No. NSD681/2021

SMBC Leasing and Finance, Inc. ARBN 602 309 366

Applicant

**Forum Enviro (Aust) Pty Ltd (voluntary administrators appointed) ACN 607 484 364
and anor**

Respondents

**SMBC L&F'S SUBMISSIONS ON MR TESORIERO'S APPLICATION
TO VARY THE FREEZING ORDERS**

1. The variations sought by Mr Tesoriero to the freezing order made against him in the Westpac proceedings would:
 - (a) permit him to pay up to the sum of \$1,866,000 for his reasonable legal expenses;
and
 - (b) release to him \$1,866,000 that does not belong to him, for payment of his personal legal expenses.
2. The freezing orders made in the Westpac proceedings (NSD616/2021) include freezing orders against various companies in respect of both Westpac's claims, and SMBC L&F's claims made in the SMBC proceedings (NSD681/2021).
3. SMBC L&F does not seek to be heard on the requested increase to the amount permitted for Mr Tesoriero's legal expenses in the freezing order against him. SMBC L&F does not sue Mr Tesoriero and did not seek freezing orders against him.
4. However, SMBC L&F does seek to be heard on the question of whether the Court should make an order releasing up to \$1,866,000 to Mr Tesoriero from sale proceeds owned by 23 Margaret Street Pty Ltd (**Margaret Street**), being proceeds of sale of 23 Margaret Street, Rozelle, of which Margaret Street was the registered proprietor.
5. Margaret Street is the 23rd Respondent in the SMBC proceedings.¹ Based on the liquidators' tracing analysis, SMBC L&F has a proprietary claim against Margaret Street for \$187,349.² Recoverability in respect of that claim is likely to be seriously

¹ See ASoC at [524]-[533].

² Affidavit of Caitlin Murray dated 28 June 2022 at [36]-[37].

diminished if this Court makes orders releasing the sale proceeds owned by Margaret Street to Mr Tesoriero. Westpac also has a proprietary claim against Margaret Street for \$638,433.³

6. SMBC L&F has already indicated that it consents to the release of \$270,000 from the Margaret Street proceeds. SMBC L&F is also willing to consent to the release of a further \$192,511.65. Together, these amounts represent the balance of the Margaret Street proceeds in the controlled monies account which exceed the proprietary claims of Westpac, SMBC L&F and others against Margaret Street.
7. The Margaret Street property was not owned by Mr Tesoriero; it was owned by Margaret Street. Although Mr Tesoriero is the sole shareholder of that company, it does not follow that Margaret Street could use its assets now to pay Mr Tesoriero's legal fees, particularly not in circumstances where the company is being sued in respect of those funds. Mr Tesoriero has not articulated any reason why funds belonging to Margaret Street should be released to him to pay his personal legal fees.
8. Margaret Street has not applied to have the freezing order against it varied. There is no evidence of Margaret Street's past or expected future legal fees. There is no evidence regarding Margaret Street's asset position beyond the Margaret Street proceeds.
9. In circumstances where the Margaret Street proceeds belong to Margaret Street (subject to claims that it holds those proceeds on trust for Westpac and SMBC L&F), there is no application by Margaret Street to vary the freezing order applicable to it, and there is no evidence regarding Margaret Street's legal expenses or financial position, the Court should not release the Margaret Street sale proceeds to Mr Tesoriero beyond the amount of \$462,511.65 (being \$270,000 + \$192,511.65).

18 July 2022



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³ Westpac's written submissions dated 30 June 2020 at [51] and [54].