

## NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 17/06/2022 2:35:04 PM AEST and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

### Details of Filing

Document Lodged: Affidavit - Form 59 - Rule 29.02(1)  
File Number: NSD616/2021  
File Title: WESTPAC BANKING CORPORATION ABN 33 007 457 141 & ANOR v  
FORUM FINANCE PTY LIMITED (IN LIQUIDATION) ACN 153 301 172  
& ORS  
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF  
AUSTRALIA



*Sia Lagos*

Dated: 17/06/2022 4:44:14 PM AEST

Registrar

### Important Information

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

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



Form 59

Rule 29.02(1)

## Affidavit

No. 616 of 2021

Federal Court of Australia

District Registry: New South Wales

Division: General

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

Applicants

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

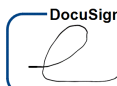
Respondents

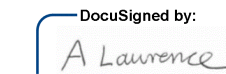
Fifth Affidavit of: **Vincenzo Frank Tesoriero**  
 Address: 64-66 Berkley St, Hawthorn VIC 3122  
 Occupation: Director  
 Date: 17 June 2022

### Contents

Document number	Details	Paragraph	Page
1	Fifth Affidavit of Vincenzo Frank Tesoriero sworn on 17 June 2022, in support of the Third Respondent's application filed on 17 June 2022.	3	2
2	Exhibit VFT-5 being a paginated bundle of documents	4	1

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 Tel 03 9242 4720  
 Email [sazz.nasimi@madgwicks.com.au](mailto:sazz.nasimi@madgwicks.com.au)  
**Address for service** Level 6, 140 William Street, Melbourne VIC 3000  
 (include state and postcode)

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[Version 3 form approved 02/05/2019]

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I, Vincenzo Frank Tesoriero, director, of 64-66 Berkeley St, Hawthorn VIC 3122 hereby make Oath and Say:

1. I am the Third Respondent.
2. I make this affidavit from my own knowledge save where otherwise indicated. Where I depose to matters that I have been informed of by others, I believe those matters to be true and correct.
3. I make this affidavit in support of my application filed on 17 June 2022 for variation of the freezing order made by the Court on 2 July 2021, in order to:
  - (a) provide for legal expenses incurred to date and expected through to conclusion of the trial;
  - (b) facilitate the release of funds paid into Court and funds paid into a controlled monies account.
4. Annexed to this affidavit and shown to me at the time of swearing this affidavit is a paginated bundle of documents in chronological order marked "VFT-5". This exhibit contains all of the documents referred to in this affidavit. Where reference is made to a specific document or part of a document contained within "VFT-5", it will be referred to by page number of that exhibit.
5. In addition to VFT-5, I also refer to the previous affidavits I have sworn in this proceeding:
  - (a) my affidavit sworn on 21 July 2021 (**my July affidavit**);
  - (b) my affidavit sworn on 3 September 2021 (**my September affidavit**);
  - (c) my affidavit sworn on 19 October 2021 (**my October affidavit**); and
  - (d) my affidavit sworn on 8 November 2021 (**my November affidavit**).

### Freezing order

6. On 2 July 2021, a freezing order was made against me with effect to 5pm on 9 July 2021. That order provided at paragraph 10(b), '*This order does not prohibit... (b) paying \$25,000 on your reasonable legal expenses*'.

A true copy of the order made on 2 July 2021 is exhibited at **VFT-5** at pages 1 to 11.

7. On 9 July 2021, the freezing order was varied by consent without admission with effect until further order of the Court. That order provided, at paragraph 10(b), '*This order does not prohibit... (b) paying \$30,000 per month (up to the sum of \$350,000 unless varied by subsequent order) on your reasonable legal expenses*'.

A true copy of the 9 July 2021 order is exhibited at **VFT-5** at pages 12 to 24.

8. On 12 November 2021, a further variation was made to the freezing order whereby the figure stated at paragraph 10(b) was increased from \$350,000 to \$450,000. The as varied paragraph 10(b) thereafter read as follows, '*This order does not prohibit... (b) paying up to the sum of \$450,000 until 10 March 2022 on your reasonable legal expenses*'.

A true copy of the order made on 12 November 2021 is exhibited at **VFT-5** at pages 25 to 46.

9. At the time that the Freezing Orders were originally made I had cash in my NAB account of approximately \$255,055.06. However, those funds have since been depleted primarily in meeting the interest payments for the various facilities I had at the time.
10. Since the date of the Freezing Orders various parties such as mortgagees and the Receivers have sold numerous properties that were owned by family. The funds realised from the sales of these properties are presently sitting in numerous locations and are under the control of various parties as detailed in the paragraphs below.

#### **Funds paid into Federal Court**

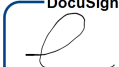
11. In around October 2021, \$773,362.88 was paid into Court by my previous solicitors pursuant to the order made on 1 October 2021. These funds were in respect of the return of the deposit funds that I deposited to at paragraphs 17 to 27 of my October affidavit.

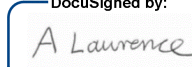
#### **Funds paid into Supreme Court**

12. On or about 3 March 2022, a further sum of \$759,619 was paid into the Supreme Court of Victoria. These funds were in respect to the sale of 1160 Glen Huntly Road 3163 (volume 1041 folio 906), a property formally owned by the company 1160 Glen Huntly Road Pty Ltd. The payment into Court was made by Nicholas James Lawyers acting for Devnull Investments Pty Ltd (ACN 169 689 301) who were the registered mortgagee on title and who had taken possession of the property. A copy of the Certificate of Receipt evidencing the deposit of the above funds is exhibited at **VFT-5** at page 47.

#### **Controlled monies account**

13. On 9 February 2022, the Court ordered that all surplus funds from the sale of the property known as 23 Margaret Street, Rozelle NSW 2039 be paid into a controlled monies account in the joint names of Westpac and Madgwicks ATF myself. Any draw down from this account requires the consent of both parties' solicitors.

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14. Following this order, my solicitors took immediate steps to set up a controlled monies account with Westpac Banking Corporation. This was a lengthy process due to the bank's processes for setting up a controlled monies account.
15. On 16 May 2022, the controlled monies account was eventually opened and shortly thereafter the sum of \$1,340,866.65 was paid into that account and which funds represented the surplus monies from the sale of the 23 Margaret Street property. A copy of the Transaction Listing evidencing the payment into the controlled monies account is exhibited at **VFT-5** at page 48.

#### **Funds held in separate controlled monies accounts**

16. A further sum of \$9,808.169.94 is being held in a separate controlled monies account being controlled by the receivers and which funds represent the surplus from the sale of 6 Bulkara Street. A true copy of a letter from Allens confirming the above dated 23 May 2022 is exhibited at **VFT-5** at pages 49 to 51.

#### **Unexpected Expenditure**

17. I have the read the affidavit of Mr Sazz Nasimi dated 9 November 2021 in which he listed the anticipated legal costs that he believed I would incur in defending the claim being made against me (and my entities) by Westpac and others. However, no consideration was given by Mr Nasimi to the various ancillary and associated matters which branch off from the Westpac claim and for which I am also incurring significant legal expenses. Details of these expenses are provided in the paragraphs below.

#### Fortis Law Taxation

18. On or about 12 November 2021, I received a tax invoice from Fortis Law claiming I owed them \$233,660.52 for works undertaken from 3 July 2021 to 29 September 2021. Upon hearing this I instructed my lawyers to immediately dispute the fees on the grounds that they were excessive.
19. On or about 15 December 2021, Fortis Law filed an application for assessment of costs in respect of the works alleged to have been undertaken by them. As a result of the application made, Fortis Law were ordered to file a bill in assessable form with respect to the fees that it was claiming.
20. After numerous failed attempts made by Fortis Law, on 23 March 2022, the relevant documents were finally filed by Fortis Law in the proper form.
21. On 6 May 2022, Madgwicks Lawyers filed a notice of objection together with submissions concerning the fees charged by Fortis Law.
22. On 20 May 2022, Fortis Law filed their submissions in response to my submissions.

23. The next step is for Madgwicks to file further submissions if required. The costs assessment remains ongoing.
24. I have incurred and I continue to incur legal expenses in relation to these works.

Statutory Demands

25. On or around 10 December 2021, I on behalf of various entities associated with either me or my father, received from the Receivers 10 separate statutory demands. These demands have significant overlap with the issues, allegations and defences being argued in the present matter. However, notwithstanding this, the Receivers persisted with and maintained the said demands.
26. On 5 May 2022, the Receivers conceded their position on 1 out of the 10 statutory demands. However, despite making this concession the Receivers refused to pay the legal expenses that I had incurred in addressing that statutory demand and instead agreed only to pay the filing fee charged to me for filing the set aside application.
27. The dispute concerning the remaining statutory demands is ongoing and it appears that I will now have to arrange for audited accounts to be completed for each entity in order to address the issue of solvency. I am informed that the costs associated with undertaking this task will be in the vicinity of \$30,000.
28. As a result of the Receivers actions, I have had to incur further unanticipated legal, accounting and other expenses in disputing the statutory demands.

Communications with the Parties

29. A common theme which I am experiencing in this matter is that the litigating banks are not exercising any reasonableness and where there is an issue that could be taken, irrespective of how trivial, that issue has been taken. As a result, I am incurring unnecessary legal fees in having my solicitors address such matters. Again, examples of this are provided below.
30. On or about February 2022 the Receivers took possession of the properties situated at James St Clayton Victoria. I understand from my lawyers that at the time of taking possession, my lawyers were trying to negotiate with the Receivers to have them grant me some further time to potentially refinance those properties.
31. In any event, the Receivers subsequently chose to abruptly cease communicating with my lawyers and instead attend the James street site on a weekend in order to take possession of the properties. The sudden nature of the Receivers actions meant that I did not have sufficient time to remove the items which were being stored at the premises. These items were personal belongings such as old photo albums, old clothes,

heirlooms etc. The Receivers took possession of these items and threatened to have them disposed of despite my repeated requests for the return of the items.

32. My solicitors had to write in excess of 20 separate communications to the Receivers in order to obtain the return of these personal items. These letters were an example of unanticipated (and unnecessary) legal expenses being imposed upon me by the various parties.
33. I am presently experiencing a similar situation with respect to my personal items which were at the Bulkara properties (both 5 and 6) when those properties were sold by the Receivers. Again, numerous correspondences have been written to the Receivers in relation to this issue and as yet this issue remains unresolved. I am fearful that if it is not resolved soon, I will have to come back before this Court to make a further application thereby incurring further legal fees.

**Access to funds for legal expenses**

34. I am informed by my solicitors that my fees with Madgwicks Lawyers (including disbursements/counsel fees) were as at the end of April 2022, **\$546,000**. Further, it is estimated additional fees to the conclusion of the trial are \$1.32 million, as shown in the following table.

<b>Anticipated Legal Work</b>	<b>Costs (\$AUD)</b>
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
<b>Total:</b>	<b>\$1.32 million</b>

35. To date, \$180,000 from frozen funds has been paid to my legal representatives of which I am informed by my solicitor that \$75,000 (inclusive GST) has been paid to senior counsel, \$21,125.00 (inclusive GST) to junior counsel and Madgwicks had received \$60,909.63 (inclusive GST). However Madgwicks has also paid \$12,479.44 in disbursements that is has not been reimbursed and presently owes Auscript \$11,972.98 for transcripts which have been ordered and received but are yet to be paid for.

Madgwicks has indicated to me unless something is done about the fee situation they may not be able to continue acting for me.

- 36. I do not have access to any funds to pay my legal expenses. A true copy of a letter from my accountant Lou Steffanetti dated 31 May 2022 confirming my lack of funds is exhibited at **VFT-5** at page 52.
- 37. Annexure A to my July affidavit identifies properties owned by entities associated with me that are earning rent. That entirety of this rental income is being paid towards mortgage interest payments, as referred to paragraph 5 of my October affidavit. There is a shortfall on my mortgage payments of approximately \$8,500 per month, and I have no funds left over for legal fees or living expenses.

	<b>Rental Income</b>	<b>Interest Expenses</b>	<b>Net position</b>
<b>Rental income received</b>	\$99,089.98		\$99,089.98
<b>Mortgage payments owed to Judo Bank</b>		-\$98,600.00	-\$98,600.00
<b>Mortgage payments owed to ANZ</b>		-\$9,000	-\$9,000
		<b>Deficit each month</b>	<b>-\$8,510.02</b>

- 38. The funds in the NAB accounts that I referred to at paragraph 4 of my October affidavit have all been applied towards legal fees and interest payments on mortgages to Judo Bank. Save for the account for 286 Carlisle Street Pty Ltd which currently holds \$2,005.06, all NAB accounts have had a nil account balance since January 2022. NAB has refused to release the funds in the 286 Carlisle Street Pty Ltd account without Westpac's consent.
- 39. Save for what is being used to service the interest payments, I have no funds in my CBA or ANZ accounts.

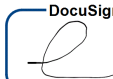
**Sale of 5 Bulkara Street Wagstaffe NSW 2257**

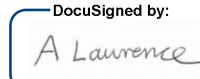
- 40. NAB has appointed Deloitte as receiver over 5 Bulkara Street Wagstaffe NSW 2257 (**5 Bulkara St**) and 5 Bulkara St is currently listed for sale.



41. There are a number of entities which claim an interest in 5 Bulkara St:
- (a) A first registered mortgage in favour of NAB;
  - (b) A guarantee provided in respect of Facility for Forum Group Pty Ltd (Receivers and managers appointed) in favour of NAB;
  - (c) An equitable mortgage (caveat registered) in favour of Aksara Holdings Pty Ltd **(Aksara)**; and
  - (d) A proprietary claim made by Westpac which is the subject of the dispute in this proceeding.
42. On 3 June 2022 my solicitors wrote to Dentons, the solicitors for the receivers, to say that once NAB's registered mortgage was discharged the remaining proceeds should be applied to discharge Aksara's debt, with the balance (if any) to be paid into the controlled monies account pending further Court orders. The solicitors for the liquidators of 5 Bulkara Pty Ltd and Westpac, as well as Konfir Kabo of Aksara were copied into this correspondence.
- A true copy of the email from Madgwicks to Dentons dated 3 June 2022 and the attached letter is exhibited at **VFT-5** at pages 53 to 55.
43. On 8 June MinterEllison wrote to my solicitors to say that Aksara claims an equitable interest only and Westpac contends its (disputed) proprietary interest pre-dates any equitable interest claimed by Aksara.
- A true copy of the email from MinterEllison to Madgwicks dated 8 June 2022 and the attached letter is exhibited at **VFT-5** at pages 56 to 58.
44. On 8 June 2022 Dentons wrote to my solicitors to say it was not incumbent on the receivers to decide between competing claims to any surplus and, absent agreement between all claimants to any surplus the receivers intend to pay any surplus into Court.
45. A true copy of the email from Dentons to Madgwicks dated 8 June 2022 is exhibited at **VFT-5** at page 59.

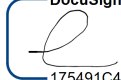
**The contents of this my affidavit are true and correct and I make it knowing that a person making a false affidavit may be prosecuted for the offence of perjury.**

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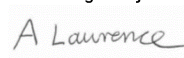
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Sworn / Affirmed by the deponent )  
at Melbourne )  
in the state of Victoria )  
on 17 June 2022 )  
Before me: )

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\_\_\_\_\_  
Signature of deponent

DocuSigned by:  
  
B06A22BB61D3418...

DocuSigned by:  
  
Alexandra Lawrence  
6<sup>th</sup> Floor, 140 William St,  
Melbourne VIC 3000  
AUSTRALIA  
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 saw the face of the deponent.
3. I observed the deponent signing a copy of this affidavit in real time.
4. I attest or otherwise confirm witnessing the deponent's signature by signing this affidavit.
5. I am reasonably satisfied this affidavit signed by me is a copy of the affidavit signed by the deponent.
6. I has confirmed the person's identity based on the following identification document presented to me: Drivers Licence

## 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 "**VFT-5**" now produced and shown to Vincenzo Frank Tesoriero at the time of swearing his affidavit on 17 June 2022 before me:

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Alexandra Lawrence  
Solicitor

DocuSigned by:  
  
Alexandra Lawrence  
6<sup>th</sup> Floor, 140 William St,  
Melbourne VIC 3000  
An Australian  
Legal Practitioner  
within the meaning of the  
Legal Profession  
Uniform Law (Victoria)

## Exhibit certificate

Federal Court of Australia

No. NSD 616 of 2021

District Registry: New South Wales

Division: General

**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 "**VFT-5**" now produced and shown to Vincenzo Frank Tesoriero at the time of swearing his affidavit on 17 June 2022 before me:

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Alexandra Lawrence  
Solicitor



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

No: NSD616/2021

**WESTPAC BANKING CORPORATION ABN 33 007 457 141**  
Applicant

**FORUM FINANCE PTY LIMITED** and others named in the schedule  
Respondent

**ORDER**

**JUDGE:** JUSTICE LEE

**DATE OF ORDER:** 02 July 2021

**WHERE MADE:** Sydney

**THE COURT ORDERS THAT:**

1. The applicant have leave to file:
  - (a) the Interlocutory Application dated 2 July 2021;
  - (b) the affidavit of Caitlin Maria Murray dated 2 July 2021; and
  - (c) the affidavit of Nicholas Antony O'Brien dated 1 July 2021.
2. Prayers 1 to 8 of the Interlocutory Application be returnable *instanter*.
3. Pursuant to r 1.39 of the *Federal Court Rules 2011* (Cth) (**FCR**) the time for service of the Interlocutory Application and the supporting affidavits is abridged to 6:00pm on 2 July 2021 with service to be effected on the third respondent:
  - (a) by sending an email to the email address [r.panetta@panetta.com.au](mailto:r.panetta@panetta.com.au) by 5pm on 2 July 2021; and
  - (b) as soon as practicable thereafter at 23 Margaret Street, Rozelle NSW 2039.

- 2 -



4. A freezing order be made against Vincenzo Frank Tesoriero pursuant to s 23 of the *Federal Court of Australia Act 1976* (Cth) (**Act**) and FCR 7.34, in the form of Annexure A to these orders.
5. The interlocutory application be listed for further hearing before Justice Lee at 9:30am on 9 July 2021.
6. Vincenzo Frank Tesoriero be joined as the third respondent.
7. The applicant has leave to file and serve an amended originating application by 9.30am on 9 July 2021.
8. Leave to enter these orders forthwith.
9. Costs reserved.
10. Liberty to the third respondent to apply to vary these orders by telephone to the Associate to Justice Lee prior to 9 July 2021.

Date that entry is stamped: 2 July 2021

*Sia Lagos*  
Registrar



**ANNEXURE A – FREEZING ORDER**

**PENAL NOTICE – FREEZING ORDER**

**TO: VINCENZO FRANK TESORIERO**

**IF YOU (BEING THE PERSON BOUND BY THIS ORDER):**

- (A) **REFUSE OR NEGLECT TO DO ANY ACT WITHIN THE TIME SPECIFIED IN THIS ORDER FOR THE DOING OF THE ACT; OR**
- (B) **DISOBEY THE ORDER BY DOING AN ACT WHICH THE ORDER REQUIRES YOU NOT TO DO,**

**YOU WILL BE LIABLE TO IMPRISONMENT, SEQUESTRATION OF PROPERTY OR OTHER PUNISHMENT.**

**ANY OTHER PERSON WHO KNOWS OF THIS ORDER AND DOES ANYTHING WHICH HELPS OR PERMITS YOU TO BREACH THE TERMS OF THIS ORDER MAY BE SIMILARLY PUNISHED.**

**TO VINCENZO FRANK TESORIERO**

This is a *'freezing order'* made against you on 2 July 2021 by Justice Lee at a hearing without notice to you after the Court was given the undertakings set out in Schedule A to this order and after the Court read the affidavits listed in Schedule B to this order.

**THE COURT ORDERS:**

**INTRODUCTION**

- (1) (a) The application for this order is made returnable immediately.
- (b) The time for service of the application and supporting affidavits is abridged and service is to be effected by 6.00pm on 2 July 2021 with service to be effected on you:
- (i) by sending an email to the email address [r.panetta@panetta.com.au](mailto:r.panetta@panetta.com.au) by 5pm on 2 July 2021
- (ii) as soon as practicable thereafter at 23 Margaret Street, Rozelle NSW 2039.
- (2) Subject to the next paragraph, this order has effect up to and including 5pm on 9 July 2021 (the *'Return Date'*). On the Return Date at 9:30am there will be a further hearing in respect of this order before Justice Lee.



- (3) Anyone served with or notified of this order, including you, may apply to the Court at any time to vary or discharge this order or so much of it as affects the person served or notified.
- (4) In this order:
  - (a) '*applicant*', if there is more than one applicant, includes all the applicants;
  - (b) '*you*', where there is more than one of you, includes all of you and includes you if you are a corporation;
  - (c) '*third party*' means a person other than you and the applicant;
  - (d) '*unencumbered value*' means value free of mortgages, charges, liens or other encumbrances.
  - (e) '*Relevant Amount*' means the amount of AUD254,219,440.23.
- (5)
  - (a) If you are ordered to do something, you must do it by yourself or through directors, officers, partners, employees, agents or others acting on your behalf or on your instructions.
  - (b) If you are ordered not to do something, you must not do it yourself or through directors, officers, partners, employees, agents or others acting on your behalf or on your instructions or with your encouragement or in any other way.

#### **FREEZING OF ASSETS**

- (6)
  - (a) You must not remove from Australia or in any way dispose of, deal with or diminish the value of any of your assets in Australia ('Australian assets') up to the unencumbered value of AUD\$254,219,440.23. (the *Relevant Amount*).
  - (b) If the unencumbered value of your Australian assets exceeds the Relevant Amount, you may remove any of those assets from Australia or dispose of or deal with them or diminish their value, so long as the total unencumbered value of your Australian assets still exceeds the Relevant Amount.
- (7) For the purposes of this order,
  - (a) your assets include:
    - (iii) all your assets, whether or not they are in your name and whether they are solely or co-owned;
    - (iv) any asset which you have the power, directly or indirectly, to dispose of or deal with as if it were your own (you are to be regarded as having such power if a third party holds or controls the asset in accordance with your direct or indirect instructions); and
    - (v) the following assets in particular:
      - (A) your shares in each of the following companies:





- a. 23 Margaret Street Pty Limited ACN 623 715 373;
  - b. 1160 Glen Huntly Road Pty Limited ACN 639 447 984;
  - c. 14 Kirwin Road Morwell Pty Limited ACN 641 402 093;
  - d. 64-66 Berkeley St Hawthorn Pty Limited ACN 643 838 662;
  - e. 14 James Street Pty Limited ACN 638 449 206;
  - f. Canner Investments Pty Limited ACN 624 176 049;
  - g. Tesoriero Investment Group Pty Limited ACN 161 088 115;
  - h. 123 High Street Taradale Pty Limited ACN 639 872 512;
  - i. 160 Murray Valley Hwy Lake Boga Pty Limited ACN 641 392 921;
  - j. 31 Ellerman Street Dimboola Pty Limited ACN 641 392 887;
  - k. 4 Cowslip Street Violet Town Pty Limited ACN 639 872 352;
  - l. 55 Nolan Street Maryborough Pty Limited ACN 641 392 912;
  - m. 89 Betka Road Mallacoota Pty Limited ACN 641 393 179;
  - n. 9 Gregory Street Ouyen Pty Limited ACN 641 392 707;
  - o. 9 Main Street Derrinallum Pty Limited ACN 639 872 736;
  - p. Forum Group Financial Services Pty Limited ACN 623 033 705;
  - q. 26 Edmonstone Road Pty Limited ACN 622 944 129;
  - r. 5 Bulkara Street Pty Limited ACN 630 982 160; and
  - s. 6 Bulkara Street Pty Limited ACN 639 734 473.
- (b) the value of your assets is the value of the interest you have individually in your assets.

### **PROVISION OF INFORMATION**

- (8) Subject to paragraph 9, you must:
- (a) at or before **5pm on 8 July 2021** (or within such further time as the Court may allow) to the best of your ability inform the applicant in writing of all your assets in Australia, giving their value, location and details (including any mortgages, charges or other encumbrances to which they are subject) and the extent of your interest in the assets;
  - (b) by **5pm on 8 July 2021**, swear and serve on the applicant an affidavit setting out the above information.



- (9) (a) This paragraph (9) applies if you are not a corporation and you wish to object to complying with paragraph 8 on the grounds that some or all of the information required to be disclosed may tend to prove that you:
- (i) have committed an offence against or arising under an Australian law or a law of a foreign country; or
  - (ii) are liable to a civil penalty.
- (b) This paragraph (9) also applies if you are a corporation and all of the persons who are able to comply with paragraph 8 on your behalf and with whom you have been able to communicate, wish to object to your complying with paragraph 8 on the grounds that some or all of the information required to be disclosed may tend to prove that they respectively:
- (i) have committed an offence against or arising under an Australian law or a law of a foreign country; or
  - (ii) are liable to a civil penalty.
- (c) You must:
- (i) disclose so much of the information required to be disclosed to which no objection is taken; and
  - (ii) prepare an affidavit containing so much of the information required to be disclosed to which objection is taken, and deliver it to the Court in a sealed envelope; and
  - (iii) file and serve on each other party a separate affidavit setting out the basis of the objection.

#### **EXCEPTIONS TO THIS ORDER**

- (10) This order does not prohibit:
- (a) you paying up to \$2,500 a week on your ordinary living expenses;
  - (b) paying \$25,000 on your reasonable legal expenses;
  - (c) dealing with or disposing of any of your assets in the ordinary and proper course of your business, including paying business expenses bona fide and properly incurred; and
  - (d) in relation to matters not falling within (a), (b) or (c), dealing with or disposing of any of your assets in discharging obligations bona fide and properly incurred under a contract entered into before this order was made, provided that before doing so you give the applicant, if possible, at least two working days written notice of the particulars of the obligation.
- (11) You and the applicant may agree in writing that the exceptions in the preceding paragraph are to be varied. In that case the applicant or you must as soon as practicable



file with the Court and serve on the other a minute of a proposed consent order recording the variation signed by or on behalf of the applicant and you, and the Court may order that the exceptions are varied accordingly.

- (12) (a) This order will cease to have effect if you:
- (i) pay the sum of \$254,219,440.23 into Court; or
  - (ii) pay that sum into a joint bank account in the name of your lawyer and the lawyer for the applicant as agreed in writing between them; or
  - (iii) provide security in that sum by a method agreed in writing with the applicant to be held subject to the order of the Court.
- (b) Any such payment and any such security will not provide the applicant with any priority over your other creditors in the event of your insolvency.
- (c) If this order ceases to have effect pursuant 12(a) above, you must as soon as practicable file with the Court and serve on the applicant notice of that fact.

#### **COSTS**

- (13) The costs of this application are reserved to the Court hearing the application on the Return Date.

#### **PERSONS OTHER THAN YOU AND THE APPLICANT**

##### **(14) Set off by banks**

This order does not prevent any bank from exercising any right of set off it has in respect of any facility which it gave you before it was notified of this order.

##### **(15) Bank withdrawals by you**

No bank need inquire as to the application or proposed application of any money withdrawn by you if the withdrawal appears to be permitted by this order.

##### **(16) Persons outside Australia**

- (a) Except as provided in subparagraph (b) below, the terms of this order do not affect or concern anyone outside Australia.
- (b) The terms of this order will affect the following persons outside Australia:
- (i) you and your directors, officers, employees and agents (except banks and financial institutions);
  - (ii) any person (including a bank or financial institution) who:
    - (A) is subject to the jurisdiction of this Court; and
    - (B) has been given written notice of this order, or has actual knowledge of the substance of the order and of its requirements; and



(C) is able to prevent or impede acts or omissions outside Australia which constitute or assist in a disobedience of the terms of this order; and

(iii) any other person (including a bank of financial institution), only to the extent that this order is declared enforceable by or is enforced by a court in a country or state that has jurisdiction over that person or over any of that person's assets.

**(17) Assets located outside Australia**

Nothing in this order shall, in respect of assets located outside Australia, prevent any third party from complying or acting in conformity with what it reasonably believes to be its bona fide and properly incurred legal obligations, whether contractual or pursuant to a court order or otherwise, under the law of the country or state in which those assets are situated or under the proper law of any contract between a third party and you, provided that in the case of any future order of a court of that country or state made on your or the third party's application, reasonable written notice of the making of the application is given to the applicant.



## SCHEDULE A

### UNDERTAKINGS GIVEN TO THE COURT BY THE APPLICANT

- (1) The applicant undertakes to submit to such order (if any) as the Court may consider to be just for the payment of compensation (to be assessed by the Court or as it may direct) to any person (whether or not a party) affected by the operation of the order.
- (2) As soon as practicable, the applicant will file and serve upon you copies of:
  - (a) this order;
  - (b) the application for this order for hearing on the return date;
  - (c) the following material in so far as it was relied on by the applicant at the hearing when the order was made:
    - (i) affidavits (or draft affidavits);
    - (ii) exhibits capable of being copied;
    - (iii) any written submission; and
    - (iv) any other document that was provided to the Court.
  - (d) a transcript, or, if none is available, a note, of any exclusively oral allegation of fact that was made and of any exclusively oral submission that was put, to the Court;
  - (e) the originating process.
- (3) As soon as practicable, the applicant will cause anyone notified of this order to be given a copy of it.
- (4) The applicant will pay the reasonable costs of anyone other than you and the respondents which have been incurred as a result of this order, including the costs of finding out whether that person holds any of your assets.
- (5) If this order ceases to have effect the applicant will promptly take all reasonable steps to inform in writing anyone who has been notified of this order, or who the applicant has reasonable grounds for supposing may act upon this order, that it has ceased to have effect.
- (6) The applicant will not, without leave of the Court, use any information obtained as a result of this order for the purpose of any civil or criminal proceedings, either in or outside Australia, other than this proceeding except for the purposes of any police, regulatory authority or prudential disclosure.
- (7) The applicant will not, without leave of the Court, seek to enforce this order in any country outside Australia or seek in any country outside Australia an order of a similar nature or an order conferring a charge or other security against you or your assets.



**SCHEDULE B**

**AFFIDAVITS RELIED ON**

<b>Name of deponent</b>	<b>Date affidavit made</b>
(1) Caitlin Maria Murray	2 July 2021 (2 affidavits)
(2) Nicholas Antony O'Brien	1 July 2021
(3) Geoffrey Keith Anderson	28 June 2021
(4) Nicholas Anthony O'Brien	27 June 2021
(5) Caitlin Maria Murray	28 June 2021 (2 affidavits)

**NAME AND ADDRESS OF APPLICANT'S LAWYERS**

The applicant's lawyers are:

MinterEllison  
Governor Macquarie Tower  
Level 40, 1 Farrer Place  
Sydney NSW 2000

Attention: Caitlin Murray  
[caitlin.murray@minterellison.com](mailto:caitlin.murray@minterellison.com) ; T +61 2 9921 8514 ; M +61 422 977 971 ; +61 2 9921 8123 ref: CMM:1353397

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**Schedule**

No: NSD616/2021

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

Applicant	Westpac Banking Corporation ABN 33 007 457 141
First Respondent	Forum Finance Pty Limited ACN 153 301 172
Second Respondent	Basile Papadimitriou
Third Respondent	Vincenzo Frank Tesoriero



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

No: NSD616/2021

**WESTPAC BANKING CORPORATION ABN 33 007 457 141**  
Applicant

**FORUM FINANCE PTY LIMITED** and others named in the schedule  
Respondent

### ORDER

**JUDGE:** JUSTICE LEE

**DATE OF ORDER:** 09 July 2021

**WHERE MADE:** Sydney

#### **THE COURT ORDERS THAT:**

##### Winding up of the first respondent

1. Pursuant to s 461(1)(k) of the *Corporations Act 2001* (Cth) (**Act**), the first respondent be wound up on the basis that the Court is of the opinion that it is just and equitable that the first respondent be wound up.
2. Pursuant to s 472(1) of the Act, Jason Preston and Jason Ireland of McGrathNicol, Level 12, 20 Martin Place, Sydney NSW 2000, are appointed jointly and severally as liquidators of the first respondent (**Liquidators**).
3. Compliance with r 5.6 of the *Federal Court (Corporations) Rules 2000* (Cth) be dispensed with.
4. The Liquidators have liberty to apply for directions in relation to the conduct of the liquidation.
5. The Liquidators have access to all documents of the first respondent seized in accordance with the search orders made against the first respondent by order 7 of the orders made by Justice Lee on 28 June 2021.





Freezing orders

6. The freezing order made against the first respondent by order 4 of the orders made by Justice Lee on 2 July 2021 in relation to the interlocutory application dated 28 June 2021 (the **2 July Orders**) be extended until 5pm (AEST) on 16 July 2021.
7. The freezing order made against the second respondent by order 5 of the 2 July Orders be extended until further order.
8. The freezing order made against the third respondent by order 4 of the orders made by Justice Lee on 2 July 2021 in relation to the interlocutory application dated 2 July 2021 be varied in the form of Annexure A and be extended and apply until further order.

Orders sought by the Receivers

9. The freezing order made by Justice Lee on 28 June 2021 in the form of Annexure A be varied by adding:

“(10) This order does not prohibit:

...

- (d) without limiting subparagraphs (b) and (c), dealing with the bank account in the name of Forum Group Pty Ltd with BSB 082-080 Account Number 12-178-2934 held with National Australia Bank Ltd by discharging business expenses of Forum Group Pty Ltd bona fide and properly incurred not limited to obligations bona fide and properly owing to Octet Finance Pty Ltd ACN 124 477 916.

10. The freezing order made by Justice Lee on 28 June 2021 in the form of annexure B be varied by adding:

“(10) This order does not prohibit:

...



- (e) without limiting subparagraphs (b) and (c), dealing with the bank account in the name of Forum Group Pty Ltd with BSB 082-080 Account Number 12-178-2934 held with National Australia Bank Ltd by discharging business expenses of Forum Group Pty Ltd bona fide and properly incurred not limited to obligations bona fide and properly owing to Octet Finance Pty Ltd ACN 124 477 916.

#### Search Orders

- 11. The time for compliance by the Independent Computer Experts with order 14 of the 2 July Orders be extended insofar as it applies for the Sydney Premises as follows:
  - (a) the Independent Computer Expert provide an interim report to the Independent Solicitor of whether any Listed Things (as defined in the search orders in the 28 June Orders) were or had been located on any of the electronic copies by 5pm on 12 July 2021;
  - (b) the Independent Computer Expert provide a final report to the Independent Solicitor of whether any Listed Things were or had been located on any of the electronic copies (but not including the Our Kloud Servers) by 5pm on 19 July 2021;
  - (c) the Independent Computer Expert provide a further report to the Independent Solicitor of whether any Listed Things were or had been located on the Our Kloud Servers as soon as practicable; and
  - (d) return as soon as practicable to the Independent Solicitor all of the electronic copies.

#### Access to documents

- 12. Upon the applicant by its counsel giving the usual undertaking as to damages, until further order, the first and second respondents are restrained from deleting or altering (other than in the ordinary course of business) any data held for or on behalf of the first respondent which is stored on servers hosted by Our Kloud Pty Ltd (ACN 603 675 529).



13. The first and second respondents have first access to any documents delivered to the Court from the Brisbane search until 5pm (AEST) on 13 July 2021.
14. Any application by any person to prevent access by the applicant to any hard copy documents delivered to the Court as a result of any of the search orders in these proceedings is to be made and notified to the Associate to Lee J by 4pm on 13 July 2021.
15. The applicant is to have access from 5pm (AEST) on 13 July 2021 to any hard copy documents delivered to the Court as a result of any of the search orders in these proceedings that is not the subject of any application made in accordance with Order 14.

Other

16. These orders are to be entered forthwith.
17. The second and third respondents file notice of appearance by no later than 5pm Monday 12 July 2021.
18. The applicant file and serve any application to further amend its originating application by 26 July 2021.
19. The applicant serve the statement of claim it would file if leave were granted to amend the originating application by 26 July 2021.
20. The matter otherwise be relisted for further case management on a date to be fixed as soon as practicable after 2 August 2021 before the docket judge.
21. The parties have liberty to apply on notice to the other parties.

Date that entry is stamped: 9 July 2021

*Sia Lagos*  
Registrar



**ANNEXURE A – FREEZING ORDER**

**PENAL NOTICE – FREEZING ORDER**

**TO: VINCENZO FRANK TESORIERO**

**IF YOU (BEING THE PERSON BOUND BY THIS ORDER):**

- (A) REFUSE OR NEGLECT TO DO ANY ACT WITHIN THE TIME SPECIFIED IN THIS ORDER FOR THE DOING OF THE ACT; OR**
- (B) DISOBEY THE ORDER BY DOING AN ACT WHICH THE ORDER REQUIRES YOU NOT TO DO,**

**YOU WILL BE LIABLE TO IMPRISONMENT, SEQUESTRATION OF PROPERTY OR OTHER PUNISHMENT.**

**ANY OTHER PERSON WHO KNOWS OF THIS ORDER AND DOES ANYTHING WHICH HELPS OR PERMITS YOU TO BREACH THE TERMS OF THIS ORDER MAY BE SIMILARLY PUNISHED.**

**TO VINCENZO FRANK TESORIERO**

This is a ‘freezing order’ made against you on 2 July 2021 by Justice Lee at a hearing without notice to you after the Court was given the undertakings set out in Schedule A to this order and after the Court read the affidavits listed in Schedule B to this order and varied on 9 July 2021 by Justice Lee at a hearing with notice.

**THE COURT ORDERS:**

**INTRODUCTION**

- (1) [Deleted]
- (2) Subject to the next paragraph, this order has effect until further order of the Court.
- (3) Anyone served with or notified of this order, including you, may apply to the Court at any time to vary or discharge this order or so much of it as affects the person served or notified.
- (4) In this order:
  - (a) ‘applicant’, if there is more than one applicant, includes all the applicants;
  - (b) ‘you’, where there is more than one of you, includes all of you and includes you if you are a corporation;
  - (c) ‘third party’ means a person other than you and the applicant;
  - (d) ‘unencumbered value’ means value free of mortgages, charges, liens or other encumbrances.
  - (e) ‘Relevant Amount’ means the amount of AUD\$254,219,440.23.



- (5) (a) If you are ordered to do something, you must do it by yourself or through directors, officers, partners, employees, agents or others acting on your behalf or on your instructions.
- (b) If you are ordered not to do something, you must not do it yourself or through directors, officers, partners, employees, agents or others acting on your behalf or on your instructions or with your encouragement or in any other way.

### **FREEZING OF ASSETS**

- (6) (a) You must not remove from Australia or in any way dispose of, deal with or diminish the value of any of your assets in Australia ('Australian assets') up to the unencumbered value of AUD\$254,219,440.23. (the *Relevant Amount*).
  - (b) If the unencumbered value of your Australian assets exceeds the Relevant Amount, you may remove any of those assets from Australia or dispose of or deal with them or diminish their value, so long as the total unencumbered value of your Australian assets still exceeds the Relevant Amount.
- (7) For the purposes of this order,
- (a) your assets include:
    - (i) all your assets, whether or not they are in your name and whether they are solely or co-owned;
    - (ii) any asset which you have the power, directly or indirectly, to dispose of or deal with as if it were your own (you are to be regarded as having such power if a third party holds or controls the asset in accordance with your direct or indirect instructions); and
    - (iii) the following assets in particular:
      - (A) your shares in each of the following companies:
        - a. 23 Margaret Street Pty Limited ACN 623 715 373;
        - b. 1160 Glen Huntly Road Pty Limited ACN 639 447 984;
        - c. 14 Kirwin Road Morwell Pty Limited ACN 641 402 093;
        - d. 64-66 Berkeley St Hawthorn Pty Limited ACN 643 838 662;
        - e. 14 James Street Pty Limited ACN 638 449 206;
        - f. Canner Investments Pty Limited ACN 624 176 049;
        - g. Tesoriero Investment Group Pty Limited ACN 161 088 115;
        - h. 123 High Street Taradale Pty Limited ACN 639 872 512;
        - i. 160 Murray Valley Hwy Lake Boga Pty Limited ACN 641 392 921;
        - j. 31 Ellerman Street Dimboola Pty Limited ACN 641 392 887;
        - k. 4 Cowslip Street Violet Town Pty Limited ACN 639 872 352;



- l. 55 Nolan Street Maryborough Pty Limited ACN 641 392 912;
  - m. 89 Betka Road Mallacoota Pty Limited ACN 641 393 179;
  - n. 9 Gregory Street Ouyen Pty Limited ACN 641 392 707;
  - o. 9 Main Street Derrinallum Pty Limited ACN 639 872 736;
  - p. Forum Group Financial Services Pty Limited ACN 623 033 705;
  - q. 26 Edmonstone Road Pty Limited ACN 622 944 129;
  - r. 5 Bulkara Street Pty Limited ACN 630 982 160; and
  - s. 6 Bulkara Street Pty Limited ACN 639 734 473.
- (b) the value of your assets is the value of the interest you have individually in your assets.

#### PROVISION OF INFORMATION

- (8) Subject to paragraph 9, you must:
- (a) at or before **5pm** on **14 July 2021** (or within such further time as the Court may allow) to the best of your ability inform the applicant in writing of all your assets in Australia, giving their value, location and details (including any mortgages, charges or other encumbrances to which they are subject) and the extent of your interest in the assets;
  - (b) by **5pm** on **14 July 2021**, swear and serve on the applicant an affidavit setting out the above information.
- (9) (a) This paragraph (9) applies if you are not a corporation and you wish to object to complying with paragraph 8 on the grounds that some or all of the information required to be disclosed may tend to prove that you:
- (i) have committed an offence against or arising under an Australian law or a law of a foreign country; or
  - (ii) are liable to a civil penalty.
- (b) This paragraph (9) also applies if you are a corporation and all of the persons who are able to comply with paragraph 8 on your behalf and with whom you have been able to communicate, wish to object to your complying with paragraph 8 on the grounds that some or all of the information required to be disclosed may tend to prove that they respectively:
- (i) have committed an offence against or arising under an Australian law or a law of a foreign country; or
  - (ii) are liable to a civil penalty.
- (c) You must:
- (i) disclose so much of the information required to be disclosed to which no objection is taken; and



- (ii) prepare an affidavit containing so much of the information required to be disclosed to which objection is taken, and deliver it to the Court in a sealed envelope; and
- (iii) file and serve on each other party a separate affidavit setting out the basis of the objection.

### **EXCEPTIONS TO THIS ORDER**

(10) This order does not prohibit:

- (a) you paying up to \$5,000 a week on your ordinary living expenses;
- (b) paying \$30,000 per month (up to the sum of \$350,000 unless varied by subsequent order) on your reasonable legal expenses;
- (c) dealing with or disposing of any of your assets in the ordinary and proper course of your business, including paying business expenses bona fide and properly incurred; and
- (d) in relation to matters not falling within (a), (b) or (c), dealing with or disposing of any of your assets in discharging obligations bona fide and properly incurred under a contract entered into before this order was made, provided that before doing so you give the applicant, if possible, at least two working days written notice of the particulars of the obligation.

(10A) This order does not prohibit:

- (a) you from directing Australia and New Zealand Banking Group Limited in respect of the bank account in the name of 65 Nelson St Enterprises Pty Ltd (CAN 612 614 632) as trustee of the 65 Nelson Street Enterprises Trust (ABN 74 545 512 288) (**65 Nelson St Co**) to make payments in respect of bona fide expenses:
  - (i) for weekly wage payments for employees employed by and working in the business operated by 65 Nelson St Co;
  - (ii) lease payments for premises occupied by the business operated by 65 Nelson St Co;
  - (iii) operating expenses incurred by the business operated by 65 Nelson St Co;
- (b) you from directing any financial institution that holds bank accounts for any of the following entities:
  - (i) 23 Margaret Street Pty Limited ACN 623 715 373;
  - (ii) 1160 Glen Huntly Road Pty Limited ACN 639 447 984;
  - (iii) 14 Kirwin Road Morwell Pty Limited ACN 641 402 093;
  - (iv) 64-66 Berkeley St Hawthorn Pty Limited ACN 643 838 662;
  - (v) 14 James Street Pty Limited ACN 638 449 206;
  - (vi) Forum Group Financial Services Pty Ltd ACN 623 033 705;



- (vii) Canner Investments Pty Limited ACN 624 176 049;
- (viii) 123 High Street Taradale Pty Limited ACN 639 872 512;
- (ix) 160 Murray Valley Hwy Lake Boga Pty Limited ACN 641 392 921;
- (x) 31 Ellerman Street Dimboola Pty Limited ACN 641 392 887;
- (xi) 4 Cowslip Street Violet Town Pty Limited ACN 639 872 352;
- (xii) 55 Nolan Street Maryborough Pty Limited ACN 641 392 912;
- (xiii) 89 Betka Road Mallacoota Pty Limited ACN 641 393 179;
- (xiv) 9 Gregory Street Ouyen Pty Limited ACN 641 392 707;
- (xv) 9 Main Street Derrinallum Pty Limited ACN 639 872 736;
- (xvi) 26 Edmonstone Road Pty Limited ACN 622 944 129;
- (xvii) 5 Bulkara Street Pty Limited ACN 630 982 160; and
- (xviii) 6 Bulkara Street Pty Limited ACN 639 734 473,

to make payments in respect of bona fide expenses of the following types in relation to properties owned by the entity:

- (xix) repayments of registered mortgages that were in existence before 2 July 2021;
- (xx) land tax;
- (xxi) insurance premiums;
- (xxii) council rates;
- (xxiii) water.

(11) You and the applicant may agree in writing that the exceptions in the preceding paragraph are to be varied. In that case the applicant or you must as soon as practicable file with the Court and serve on the other a minute of a proposed consent order recording the variation signed by or on behalf of the applicant and you, and the Court may order that the exceptions are varied accordingly.

(12) (a) This order will cease to have effect if you:

- (i) pay the sum of \$254,219,440.23 into Court; or
- (ii) pay that sum into a joint bank account in the name of your lawyer and the lawyer for the applicant as agreed in writing between them; or
- (iii) provide security in that sum by a method agreed in writing with the applicant to be held subject to the order of the Court.

(b) Any such payment and any such security will not provide the applicant with any priority over your other creditors in the event of your insolvency.

(c) If this order ceases to have effect pursuant 12(a) above, you must as soon as practicable file with the Court and serve on the applicant notice of that fact.





## **COSTS**

- (13) The costs of this application are reserved to the Court hearing the application on the Return Date.

## **PERSONS OTHER THAN YOU AND THE APPLICANT**

### **(14) Set off by banks**

This order does not prevent any bank from exercising any right of set off it has in respect of any facility which it gave you before it was notified of this order.

### **(15) Bank withdrawals by you**

No bank need inquire as to the application or proposed application of any money withdrawn by you if the withdrawal appears to be permitted by this order.

### **(16) Persons outside Australia**

- (a) Except as provided in subparagraph (b) below, the terms of this order do not affect or concern anyone outside Australia.
- (b) The terms of this order will affect the following persons outside Australia:
- (i) you and your directors, officers, employees and agents (except banks and financial institutions);
  - (ii) any person (including a bank or financial institution) who:
    - (A) is subject to the jurisdiction of this Court; and
    - (B) has been given written notice of this order, or has actual knowledge of the substance of the order and of its requirements; and
    - (C) is able to prevent or impede acts or omissions outside Australia which constitute or assist in a disobedience of the terms of this order; and
  - (iii) any other person (including a bank or financial institution), only to the extent that this order is declared enforceable by or is enforced by a court in a country or state that has jurisdiction over that person or over any of that person's assets.

### **(17) Assets located outside Australia**

Nothing in this order shall, in respect of assets located outside Australia, prevent any third party from complying or acting in conformity with what it reasonably believes to be its bona fide and properly incurred legal obligations, whether contractual or pursuant to a court order or otherwise, under the law of the country or state in which those assets are situated or under the proper law of any contract between a third party and you, provided that in the case of any future order of a court of that country or state made on your or the third party's application, reasonable written notice of the making of the application is given to the applicant.



## SCHEDULE A

### UNDERTAKINGS GIVEN TO THE COURT BY THE APPLICANT

- (1) The applicant undertakes to submit to such order (if any) as the Court may consider to be just for the payment of compensation (to be assessed by the Court or as it may direct) to any person (whether or not a party) affected by the operation of the order.
- (2) As soon as practicable, the applicant will file and serve upon you copies of:
  - (a) this order;
  - (b) the application for this order for hearing on the return date;
  - (c) the following material in so far as it was relied on by the applicant at the hearing when the order was made:
    - (i) affidavits (or draft affidavits);
    - (ii) exhibits capable of being copied;
    - (iii) any written submission; and
    - (iv) any other document that was provided to the Court.
  - (d) a transcript, or, if none is available, a note, of any exclusively oral allegation of fact that was made and of any exclusively oral submission that was put, to the Court;
  - (e) the originating process.
- (3) As soon as practicable, the applicant will cause anyone notified of this order to be given a copy of it.
- (4) The applicant will pay the reasonable costs of anyone other than you and the respondents which have been incurred as a result of this order, including the costs of finding out whether that person holds any of your assets.
- (5) If this order ceases to have effect the applicant will promptly take all reasonable steps to inform in writing anyone who has been notified of this order, or who the applicant has reasonable grounds for supposing may act upon this order, that it has ceased to have effect.
- (6) The applicant will not, without leave of the Court, use any information obtained as a result of this order for the purpose of any civil or criminal proceedings, either in or outside Australia, other than this proceeding except for the purposes of any police, regulatory authority or prudential disclosure.
- (7) The applicant will not, without leave of the Court, seek to enforce this order in any country outside Australia or seek in any country outside Australia an order of a similar nature or an order conferring a charge or other security against you or your assets.



## SCHEDULE B

### AFFIDAVITS RELIED ON

<b>Name of deponent</b>	<b>Date affidavit made</b>
(1) Caitlin Maria Murray	2 July 2021 (2 affidavits)
(2) Nicholas Antony O'Brien	1 July 2021
(3) Geoffrey Keith Anderson	28 June 2021
(4) Nicholas Anthony O'Brien	27 June 2021
(5) Caitlin Maria Murray	28 June 2021 (2 affidavits)

### NAME AND ADDRESS OF APPLICANT'S LAWYERS

The applicant's lawyers are:

MinterEllison  
Governor Macquarie Tower  
Level 40, 1 Farrer Place  
Sydney NSW 2000

Attention: Caitlin Murray  
[caitlin.murray@minterellison.com](mailto:caitlin.murray@minterellison.com) ; T +61 2 9921 8514 ; M +61 422 977 971 ; +61 2 9921  
8123 ref: CMM:1353397

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**Schedule**

No: NSD616/2021

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

Second Respondent      BASILE PAPADIMITRIOU  
Third Respondent        VINCENZO FRANK TESORIERO



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

**NSD616/2021**

**WESTPAC BANKING CORPORATION ABN 33 007 457 141** and another named in  
Schedule 1

Applicants

**FORUM FINANCE PTY LIMITED ACN 153 301 172** and others named in Schedule 1

Respondents

**NSD642/2021**

**SOCIETE GENERALE ABN 71 092 516 286**

Applicant

**FORUM FINANCE PTY LIMITED ACN 153 301 172** and others named in Schedule 2

Respondents

**NSD681/2021**

**SMBC LEASING AND FINANCE, INC. SYDNEY BRANCH ARBN 602 309 366**

Applicant

**FORUM ENVIRO (AUST) PTY LTD** and another named in Schedule 3

Respondents

**ORDER**

**JUDGE:** JUSTICE LEE

**DATE OF ORDER:** 12 November 2021

**WHERE MADE:** Sydney



**THE COURT ORDERS THAT:**

**In the Westpac Proceeding (NSD616/2021)**

Winding up of the PL Entities

1. Pursuant to s 461(1)(k) or s 459A of the *Corporations Act 2001* (Cth) (**Corporations Act**) the following respondents be wound up:
  - (a) the fourth respondent, Forum Group Financial Services Pty Ltd (provisional liquidators appointed) ACN 623 033 705;
  - (b) the sixth respondent, Forum Enviro Pty Ltd (provisional liquidators appointed) ACN 168 709 840; and
  - (c) the seventh respondent, Forum Enviro (Aust) Pty Ltd (provisional liquidators appointed) ACN 607 484 364,(together referred to as the **PL Entities**).
2. Pursuant to s 472(1) of the *Corporations Act*, Jason Preston and Jason Ireland of McGrathNicol, Level 12, 20 Martin Place, Sydney NSW 2000, be appointed jointly and severally as liquidators of each of the PL Entities.
3. Pursuant to s 467(3) of the *Corporations Act*, compliance with s 465A of the *Corporations Act* be dispensed with.
4. The requirements of rules 5.6 and 5.11 of the *Federal Court (Corporations) Rules 2000* (Cth) be dispensed with.
5. The costs of and incidental to the application to wind up the PL Entities be costs in the respective liquidations of each of the PL Entities.

Request for further and better particulars of second further amended statement of claim

6. By 4pm on 3 December 2021, the third respondent, Vincenzo Frank Tesoriero (**Mr Tesoriero**), is to serve any request for further and better particulars of the second



further amended statement of claim filed 5 November 2021 (**Second Further Amended Statement of Claim**).

7. By 4pm on 31 January 2022, Westpac Banking Corporation and Westpac New Zealand Limited, the applicants in NSD616/2021 (**Westpac**) are to serve their response to any request for further and better particulars of the Second Further Amended Statement of Claim served on behalf of Mr Tesoriero.

Freezing Orders

8. Without admissions, the freezing order made against the third respondent, Mr Tesoriero, by order 4 of the orders made by Justice Lee on 2 July 2021 in relation to the interlocutory application dated 2 July 2021 (as varied on 9 July 2021 and 27 August 2021) be varied in the form **Annexed** to these orders and be extended and apply until further order (**Tesoriero Freezing Order**).

Order concerning Eric Constantinidis

9. The time by which the forty-fourth respondent, Eric Constantinidis, is to file a defence to the Second Further Amended Statement of Claim is extended to 5pm 17 December 2021.

Orders concerning interlocutory applications

10. Any application to strike out any part of the Second Further Amended Statement of Claim by Mr Tesoriero, or any other respondent, is to be filed and served by 14 February 2021.
11. In relation to any application to strike out any part of the Second Further Amended Statement of Claim:
  - (a) Mr Tesoriero, and any other respondent, is to file and serve any evidence and written submissions in support of such application by 4pm 14 February 2022;
  - (b) Westpac is to file and serve any written submissions in response by 4pm 25 February 2022; and



- (c) Mr Tesoriero, and any other respondent, is to file and serve any submissions in reply by 4pm 3 March 2022.
12. In relation to the Tesoriero Freezing Order; the freezing order against 286 Carlisle Street Pty Ltd (**286 Carlisle**) by order 1 of the orders made by Lee J on 20 October 2021; and the freezing orders against Tesoriero Investment Group Pty Ltd (**TIG**) by order 2 of the orders made by Lee J on 20 October 2021 (together the **Freezing Orders**):
- (a) Westpac are to file and serve any written submissions in support of any application to extend the Freezing Orders and any further evidence on which they rely by 4pm 14 February 2022;
- (b) Mr Tesoriero, 286 Carlisle and TIG are to file and serve any submissions in response by 4pm 25 February 2022; and
- (c) Westpac is to file and serve any submissions in reply by 4pm 3 March 2022.
13. Any interlocutory application in relation to the Freezing Orders or to strike out the Second Further Statement of Claim is listed for hearing before Justice Lee on 9 and 10 March 2022, with such hearing to take place in person.
14. The parties are to file and serve a joint Court Book containing the documents on which they intend to rely at the interlocutory hearing by 4pm 4 March 2022.

**In the SMBC Proceeding (NSD681/2021)**

Leave to proceed against respondents in external administration

15. The applicant in proceeding NSD681/2021, SMBC Leasing and Finance, Inc. ARBN 602 309 366 (**SMBC**) has leave under s 471B of the Corporations Act to proceed against:
- (a) the fourth respondent, Forum Group Financial Services Pty Ltd (in provisional liquidation) (ACN 623 033 705);
- (b) the fifth respondent, Forum Group Pty Ltd (in liquidation) (ACN 153 336 997);





- (c) the sixth respondent, Forum Finance Pty Ltd (in liquidation) (ACN 153 301 172);
- (d) the seventh respondent, The Forum Group of Companies Pty Ltd (in liquidation) (ACN 151 964 626);
- (e) the eighth respondent, Forum Fleet Pty Ltd (in liquidation) (ACN 155 440 994);
- (f) the ninth respondent, Imagetec Financial Services Pty Ltd (in liquidation) (ACN 111 978 182);
- (g) the tenth respondent, Imagetec Solutions Pty Ltd (in liquidation) (ACN 074 715 718);
- (h) the eleventh respondent, Intrashield Pty Ltd (in liquidation) (ACN 133 426 534);
- (i) the twelfth respondent, Spartan Consulting Group Pty Ltd (in liquidation) (ACN 168 989 544);
- (j) the thirteenth respondent, Iugis Pty Ltd (in liquidation) (ACN 632 882 243);
- (k) the fourteenth respondent, Iugis Waste Solutions Pty Ltd (in liquidation) (ACN 647 212 299);
- (l) the twentieth respondent, 26 Edmonstone Road Pty Ltd (in liquidation) (ACN 622 944 129);
- (m) the twenty-first respondent, 5 Bulkara Street Pty Ltd (in liquidation) (ACN 630 982 160); and
- (n) the twenty-second respondent, 6 Bulkara Street Pty Ltd (in liquidation) (ACN 639 734 473),

(together referred to as the **Externally Administered Respondent Entities**).



16. The Externally Administered Respondent Entities be excused from the requirement to file a defence in the proceedings.

Leave to serve outside of Australia

17. SMBC has leave pursuant to rule 10.43(2) of the *Federal Court Rules 2011* (Cth) (**FCR**) to serve the further amended originating application and the amended statement of claim in the form provided to the Court on 12 November 2021 (**SMBC Amended OA and SOC**) on:

- (a) the seventeenth respondent, Iugis Hellas IKE;
- (b) the eighteenth respondent, Iugis Energy SA; and
- (c) the nineteenth respondent, Mazcon Investments Hellas IKE,

in the Hellenic Republic in accordance with the *Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters* done at The Hague on 15 November 1965 by the Court Bailiff of the Court in Athens pursuant to Article 134 of the *Greek Civil Procedural Code* at the following addresses:

- (d) the seventeenth respondent, Iugis Hellas IKE, at Giannitson 90, 54627 Thessaloniki, Greece;
- (e) the eighteenth respondent, Iugis Energy SA, at Building square 48A, 57022 Sindos, Thessaloniki, Greece;
- (f) the nineteenth respondent, Mazcon Investments Hellas IKE, at 17 Ionos Dragoumi, 54625 Thessaloniki, Greece.

18. SMBC has leave pursuant to rule 10.43(2) of the FCR to serve the SMBC Amended OA and SOC on:

- (a) the fifteenth respondent, Iugis Holdings Limited (UK Company No. 11123437); and
- (b) the sixteenth respondent, Iugis (UK) Limited (UK Company No. 10745974),

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in the United Kingdom in accordance with the *Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters* done at The Hague on 15 November 1965 by sending a copy of the originating process as issued by this Court by international registered post with return receipt to:

- (a) the fifteenth respondent, Iugis Holdings Limited (UK Company No. 11123437) at 64 New Cavendish Street, London, United Kingdom, W1G 8TB; and
- (b) the sixteenth respondent, Iugis (UK) Limited (UK Company No. 10745974) at 64 New Cavendish Street, London, United Kingdom, W1G 8TB.

**In all proceedings**

Timetable

- 19. The applicants in each of the proceedings are to file and serve any evidence on which they rely by 5pm 4 February 2022.

General

Leave to enter these orders forthwith.

Date that entry is stamped: 12 November 2021

*Sia Lagos*  
Registrar



### Schedule 1

No. NSD616/2021

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

#### Applicants

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

#### Respondents

First Respondent: Forum Finance Pty Limited (in liquidation) ACN 153 301  
172  
Second Respondent: Basile Papadimitriou  
Third Respondent: Vincenzo Frank Tesoriero  
Fourth Respondent: Forum Group Financial Services Pty Ltd (provisional  
liquidators appointed) ACN 623 033 705  
Fifth Respondent: Forum Group Pty Ltd (Receivers Appointed) (in liquidation)  
ACN 153 336 997  
Sixth Respondent: Forum Enviro Pty Ltd (provisional liquidators appointed)  
ACN 168 709 840  
Seventh Respondent: Forum Enviro (Aust) Pty Ltd (provisional liquidators  
appointed) ACN 607 484 364  
Eighth Respondent: 64-66 Berkeley St Hawthorn Pty Ltd ACN 643 838 662  
Ninth Respondent: 14 James Street Pty Ltd (in liquidation) ACN 638 449 206  
Tenth Respondent: 26 Edmonstone Road Pty Ltd (in liquidation) ACN 622 944  
129  
Eleventh Respondent: 5 Bulkara Street Pty Ltd (in liquidation) ACN 630 982 160  
Twelfth Respondent: 6 Bulkara Street Pty Ltd (in liquidation) ACN 639 734 473  
Thirteenth Respondent: 23 Margaret Street Pty Ltd ACN 623 715 373



Fourteenth Respondent:	1160 Glen Huntly Road Pty Ltd ACN 639 447 984
Fifteenth Respondent:	14 Kirwin Road Morwell Pty Ltd ACN 641 402 093
Sixteenth Respondent:	Canner Investments Pty Ltd ACN 624 176 049
Seventeenth Respondent:	123 High Street Taradale Pty Ltd ACN 639 872 512
Eighteenth Respondent:	160 Murray Valley Hwy Lake Boga Pty Ltd ACN 641 392 921
Nineteenth Respondent:	31 Ellerman Street Dimboola Pty Ltd ACN 641 392 887
Twentieth Respondent:	4 Cowslip Street Violet Town Pty Ltd ACN 639 872 352
Twenty-First Respondent:	55 Nolan Street Maryborough Pty Ltd ACN 641 392 912
Twenty-Second Respondent:	89 Betka Road Mallacoota Pty Ltd ACN 641 393 179
Twenty-Third Respondent:	9 Gregory Street Ouyen Pty Ltd ACN 641 392 707
Twenty-Fourth Respondent:	9 Main Street Derrinallum Pty Ltd ACN 639 872 736
Twenty-Fifth Respondent:	286 Carlisle Street Pty Limited ACN 610 042 343
Twenty-Sixth Respondent:	275 High Street Golden Square Pty Ltd ACN 639 870 545
Twenty-Seventh Respondent:	Mazcon Investments Hellas IKE
Twenty-Eighth Respondent:	Palante Pty Ltd ACN 135 344 151
Twenty-Ninth Respondent:	Anastasios Giamouridis
Thirtieth Respondent	The Forum Group of Companies Pty Ltd (in liquidation) ACN 151 964 626
Thirty-First Respondent	Iugis Pty Ltd (in liquidation) ACN 632 882 243
Thirty-Second Respondent	Iugis (UK) Limited
Thirty-Third Respondent	Iugis Holdings Limited
Thirty-Fourth Respondent	Iugis Global Financial Services Limited
Thirty-Fifth Respondent	Iugis Finance Limited
Thirty-Sixth Respondent	Spartan Consulting Group Pty Ltd (in liquidation) ACN 168 989 544
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

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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

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**Schedule 2**

No: NSD642/2021

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

Second Respondent	Basile Papadimitriou (also known as Bill Papas)
Third Respondent	Forum Group Financial Services Pty Ltd (provisional liquidators appointed)

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**Schedule 3**

No: NSD681/2021

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

Second Respondent

Basile Papadimitriou (also known as Bill Papas)





**ANNEXURE – FREEZING ORDER**

**PENAL NOTICE – FREEZING ORDER**

**TO: VINCENZO FRANK TESORIERO**

**IF YOU (BEING THE PERSON BOUND BY THIS ORDER):**

- (A) REFUSE OR NEGLECT TO DO ANY ACT WITHIN THE TIME SPECIFIED IN THIS ORDER FOR THE DOING OF THE ACT; OR**
- (B) DISOBEY THE ORDER BY DOING AN ACT WHICH THE ORDER REQUIRES YOU NOT TO DO,**

**YOU WILL BE LIABLE TO IMPRISONMENT, SEQUESTRATION OF PROPERTY OR OTHER PUNISHMENT.**

**ANY OTHER PERSON WHO KNOWS OF THIS ORDER AND DOES ANYTHING WHICH HELPS OR PERMITS YOU TO BREACH THE TERMS OF THIS ORDER MAY BE SIMILARLY PUNISHED.**

**TO VINCENZO FRANK TESORIERO**

This is a 'freezing order' made against you on 2 July 2021 by Justice Lee at a hearing without notice to you after the Court was given the undertakings set out in Schedule A to this order and after the Court read the affidavits listed in Schedule B to this order. This freezing orders was varied on 9 July 2021, 27 August 2021 and 12 November 2021 by Justice Lee at hearings with notice to you.

**THE COURT ORDERS:**

**INTRODUCTION**

- (1) [Deleted]
- (2) Subject to the next paragraph, in accordance with the order 8 of the orders made by Justice Lee on 12 November 2021, this order has effect until further order of the Court.
- (3) Anyone served with or notified of this order, including you, may apply to the Court at any time to vary or discharge this order or so much of it as affects the person served or notified.
- (4) In this order:
  - (a) 'applicant', if there is more than one applicant, includes all the applicants;
  - (b) 'you', where there is more than one of you, includes all of you and includes you if you are a corporation;



- (c) *'third party'* means a person other than you and the applicant;
  - (d) *'unencumbered value'* means value free of mortgages, charges, liens or other encumbrances.
  - (e) *'Relevant Amount'* means the amount of AUD\$253,766,555.76 and NZD\$44,097,969.
- (5) (a) If you are ordered to do something, you must do it by yourself or through directors, officers, partners, employees, agents or others acting on your behalf or on your instructions.
- (b) If you are ordered not to do something, you must not do it yourself or through directors, officers, partners, employees, agents or others acting on your behalf or on your instructions or with your encouragement or in any other way.

#### **FREEZING OF ASSETS**

- (6) (a) You must not remove from Australia or in any way dispose of, deal with or diminish the value of any of your assets in Australia ('Australian assets') up to the unencumbered value of AUD\$253,766,555.76 and NZD\$44,097,969 (the *Relevant Amount*).
- (b) If the unencumbered value of your Australian assets exceeds the Relevant Amount, you may remove any of those assets from Australia or dispose of or deal with them or diminish their value, so long as the total unencumbered value of your Australian assets still exceeds the Relevant Amount.
- (c) If the unencumbered value of your Australian assets is less than the Relevant Amount, and you have assets outside Australia (**Worldwide Assets**):
- (i) You must not dispose of, deal with or diminish the value of any of your Australian assets or your Worldwide Assets up to the unencumbered value of the Relevant Amount; and
  - (ii) You may dispose of, deal with or diminish the value of any of your Worldwide Assets, so long as the unencumbered value of all of your Australian assets and Worldwide Assets still exceeds the Relevant Amount.
- (7) For the purposes of this order,
- (a) your assets include:
    - (i) all your assets, whether or not they are in your name and whether they are solely or co-owned;
    - (ii) any asset which you have the power, directly or indirectly, to dispose of or deal with as if it were your own (you are to be regarded as having such power if a third party holds or controls the asset in accordance with your direct or indirect instructions); and



- (iii) the following assets in particular:
- (A) your shares in each of the following companies:
- a. 23 Margaret Street Pty Limited ACN 623 715 373;
  - b. 1160 Glen Huntly Road Pty Limited ACN 639 447 984;
  - c. 14 Kirwin Road Morwell Pty Limited ACN 641 402 093;
  - d. 64-66 Berkeley St Hawthorn Pty Limited ACN 643 838 662;
  - e. 14 James Street Pty Limited ACN 638 449 206;
  - f. Canner Investments Pty Limited ACN 624 176 049;
  - g. Tesoriero Investment Group Pty Limited ACN 161 088 115;
  - h. 123 High Street Taradale Pty Limited ACN 639 872 512;
  - i. 160 Murray Valley Hwy Lake Boga Pty Limited ACN 641 392 921;
  - j. 31 Ellerman Street Dimboola Pty Limited ACN 641 392 887;
  - k. 4 Cowslip Street Violet Town Pty Limited ACN 639 872 352;
  - l. 55 Nolan Street Maryborough Pty Limited ACN 641 392 912;
  - m. 89 Betka Road Mallacoota Pty Limited ACN 641 393 179;
  - n. 9 Gregory Street Ouyen Pty Limited ACN 641 392 707;
  - o. 9 Main Street Derrinallum Pty Limited ACN 639 872 736;
  - p. Forum Group Financial Services Pty Limited ACN 623 033 705;
  - q. 26 Edmonstone Road Pty Limited ACN 622 944 129;
  - r. 5 Bulkara Street Pty Limited ACN 630 982 160;
  - s. 6 Bulkara Street Pty Limited ACN 639 734 473;
  - t. Pankarn Pty Ltd ACN 104 616 051;
  - u. 275 High Street Golden Square Pty Ltd ACN 639 870 545;
  - v. 22 High Street Rushworth Pty Ltd ACN 641 392 903;
  - w. 8-12 Natalia Ave Oakleigh Pty Ltd ACN 643 838 626;
  - x. Vintes Qld Pty. Ltd. ACN 624 585 922;
  - y. 65 Nelson Street Enterprises Pty. Ltd. ACN 612 614 632;
  - z. 193 Carlisle Street Enterprises Pty. Ltd. ACN 612 615 237;
  - aa. Vintes No 4 Pty Ltd ACN 639 726 524;
  - bb. BV Holdings VT Pty Ltd ACN 639 891 624;
  - cc. BV Holdings TD Pty Ltd ACN 639 895 257;



- dd. BV Holdings GS Pty Ltd ACN 640 218 864;
- ee. Vintes Qld No 3 Pty Ltd ACN 640 879 152;
- ff. BV Holdings DB Pty Ltd ACN 641 393 151;
- gg. BV Holdings RW Pty Ltd ACN 641 393 197;
- hh. BV Holdings MB Pty Ltd ACN 641 393 240;
- ii. BV Holdings LB Pty Ltd ACN 641 393 268;
- jj. BV Holdings MC Pty Ltd ACN 641 393 277;
- kk. BV Holdings MW Pty Ltd ACN 641 393 286;
- ll. BV Holdings DN Pty Ltd ACN 639 895 239;
- mm. 308 Carlisle Street Holdings Pty. Ltd. ACN 613 047 439;
- nn. 286 Carlisle Street Pty Ltd ACN 610 042 343;
- oo. Thrivi Group Pty Ltd ACN 625 491 858;
- pp. Mangusta (Vic) Pty. Ltd. ACN 631 520 682;
- qq. San Pel One Pty LTD ACN 651 919 265; and
- rr. San Pel Two Pty Ltd ACN 651 927 356;

(B) the following vehicles and vessels:

- a. Vessel "XOXO" Cayman Islands Official Number 734587;
- b. 2018 Porsche Cayenne with VIN WPiZZZ9YZKDA90623
- c. 2014 Alfa Romeo;
- d. 2020 Mini Cooper S with VIN WMWXX920802M95982;
- e. 2008 Ducati 1098R with registration DUCR;
- f. 2020 BMW S1000 with registration EOZ12;
- g. 1957 Chevrolet Bel Air;
- h. 2019 BRP Can-Am Ryker 600 registration RYKER;

- (b) the value of your assets is the value of the interest you have individually in your assets.

### PROVISION OF INFORMATION

(8) Subject to paragraph 9, you must:

- (a) at or before **5pm on 14 July 2021** (or within such further time as the Court may allow) to the best of your ability inform the applicant in writing of all your assets in Australia, giving their value, location and details (including any mortgages,



charges or other encumbrances to which they are subject) and the extent of your interest in the assets;

- (b) by **5pm on 14 July 2021**, swear and serve on the applicant an affidavit setting out the above information
  - (c) by **5pm on 3 September 2021** (or within such further time as the Court may allow) to the best of your ability, swear and serve on the applicants an affidavit setting out all your assets outside of Australia (**Worldwide Assets**), giving their value, location and details (including any mortgages, charges or other encumbrances to which they are subject) and the extent of your interest in the Worldwide Assets.
- (9) (a) This paragraph (9) applies if you are not a corporation and you wish to object to complying with paragraph 8 on the grounds that some or all of the information required to be disclosed may tend to prove that you:
- (i) have committed an offence against or arising under an Australian law or a law of a foreign country; or
  - (ii) are liable to a civil penalty.
- (b) This paragraph (9) also applies if you are a corporation and all of the persons who are able to comply with paragraph 8 on your behalf and with whom you have been able to communicate, wish to object to your complying with paragraph 8 on the grounds that some or all of the information required to be disclosed may tend to prove that they respectively:
- (i) have committed an offence against or arising under an Australian law or a law of a foreign country; or
  - (ii) are liable to a civil penalty.
- (c) You must:
- (i) disclose so much of the information required to be disclosed to which no objection is taken; and
  - (ii) prepare an affidavit containing so much of the information required to be disclosed to which objection is taken, and deliver it to the Court in a sealed envelope; and
  - (iii) file and serve on each other party a separate affidavit setting out the basis of the objection.

#### **EXCEPTIONS TO THIS ORDER**

(10) This order does not prohibit:

- (a) you paying up to \$5,000 a week on your ordinary living expenses;



- (b) paying up to the sum of \$450,000 until 10 March 2022 on your reasonable legal expenses;
- (c) dealing with or disposing of any of your assets in the ordinary and proper course of your business, including paying business expenses bona fide and properly incurred; and
- (d) in relation to matters not falling within (a), (b) or (c), dealing with or disposing of any of your assets in discharging obligations bona fide and properly incurred under a contract entered into before this order was made, provided that before doing so you give the applicant, if possible, at least two working days written notice of the particulars of the obligation.

(10A) This order does not prohibit:

- (a) you from directing Australia and New Zealand Banking Group Limited in respect of the bank account in the name of 65 Nelson St Enterprises Pty Ltd (ACN 612 614 632) as trustee of the 65 Nelson Street Enterprises Trust (ABN 74 545 512 288) (**65 Nelson St Co**) to make payments in respect of bona fide expenses:
  - (i) for weekly wage payments for employees employed by and working in the business operated by 65 Nelson St Co;
  - (ii) lease payments for premises occupied by the business operated by 65 Nelson St Co;
  - (iii) operating expenses incurred by the business operated by 65 Nelson St Co;
- (b) you from directing any financial institution that holds bank accounts for any of the following entities:
  - (i) 23 Margaret Street Pty Limited ACN 623 715 373;
  - (ii) 1160 Glen Huntly Road Pty Limited ACN 639 447 984;
  - (iii) 14 Kirwin Road Morwell Pty Limited ACN 641 402 093;
  - (iv) 64-66 Berkeley St Hawthorn Pty Limited ACN 643 838 662;
  - (v) 14 James Street Pty Limited ACN 638 449 206;
  - (vi) Forum Group Financial Services Pty Ltd ACN 623 033 705;
  - (vii) Canner Investments Pty Limited ACN 624 176 049;
  - (viii) 123 High Street Taradale Pty Limited ACN 639 872 512;
  - (ix) 160 Murray Valley Hwy Lake Boga Pty Limited ACN 641 392 921;
  - (x) 31 Ellerman Street Dimboola Pty Limited ACN 641 392 887;
  - (xi) 4 Cowslip Street Violet Town Pty Limited ACN 639 872 352;



- (xii) 55 Nolan Street Maryborough Pty Limited ACN 641 392 912;
- (xiii) 89 Betka Road Mallacoota Pty Limited ACN 641 393 179;
- (xiv) 9 Gregory Street Ouyen Pty Limited ACN 641 392 707;
- (xv) 9 Main Street Derrinallum Pty Limited ACN 639 872 736;
- (xvi) 26 Edmonstone Road Pty Limited ACN 622 944 129;
- (xvii) 5 Bulkara Street Pty Limited ACN 630 982 160; and
- (xviii) 6 Bulkara Street Pty Limited ACN 639 734 473,

to make payments in respect of bona fide expenses of the following types in relation to properties owned by the entity:

- (xix) repayments of registered mortgages that were in existence before 2 July 2021;
- (xx) land tax;
- (xxi) insurance premiums;
- (xxii) council rates;
- (xxiii) water.

(11) You and the applicant may agree in writing that the exceptions in the preceding paragraph are to be varied. In that case the applicant or you must as soon as practicable file with the Court and serve on the other a minute of a proposed consent order recording the variation signed by or on behalf of the applicant and you, and the Court may order that the exceptions are varied accordingly.

(12) (a) This order will cease to have effect if you:

- (i) pay the sum of AUD\$253,766,555.76 and NZD\$44,097,969 into Court; or
- (ii) pay that sum into a joint bank account in the name of your lawyer and the lawyer for the applicant as agreed in writing between them; or
- (iii) provide security in that sum by a method agreed in writing with the applicant to be held subject to the order of the Court.

(b) Any such payment and any such security will not provide the applicant with any priority over your other creditors in the event of your insolvency.

(c) If this order ceases to have effect pursuant 12(a) above, you must as soon as practicable file with the Court and serve on the applicant notice of that fact.

## **COSTS**

(13) The costs of this application are reserved to the Court hearing the application on the Return Date.



## **PERSONS OTHER THAN YOU AND THE APPLICANT**

### **(14) Set off by banks**

This order does not prevent any bank from exercising any right of set off it has in respect of any facility which it gave you before it was notified of this order.

### **(15) Bank withdrawals by you**

No bank need inquire as to the application or proposed application of any money withdrawn by you if the withdrawal appears to be permitted by this order.

### **(16) Persons outside Australia**

- (a) Except as provided in subparagraph (b) below, the terms of this order do not affect or concern anyone outside Australia.
- (b) The terms of this order will affect the following persons outside Australia:
  - (i) you and your directors, officers, employees and agents (except banks and financial institutions);
  - (ii) any person (including a bank or financial institution) who:
    - (A) is subject to the jurisdiction of this Court; and
    - (B) has been given written notice of this order, or has actual knowledge of the substance of the order and of its requirements; and
    - (C) is able to prevent or impede acts or omissions outside Australia which constitute or assist in a disobedience of the terms of this order; and
  - (iii) any other person (including a bank or financial institution), only to the extent that this order is declared enforceable by or is enforced by a court in a country or state that has jurisdiction over that person or over any of that person's assets.

### **(17) Assets located outside Australia**

Nothing in this order shall, in respect of assets located outside Australia, prevent any third party from complying or acting in conformity with what it reasonably believes to be its bona fide and properly incurred legal obligations, whether contractual or pursuant to a court order or otherwise, under the law of the country or state in which those assets are situated or under the proper law of any contract between a third party and you, provided that in the case of any future order of a court of that country or state made on your or the third party's application, reasonable written notice of the making of the application is given to the applicant.





## SCHEDULE A

### UNDERTAKINGS GIVEN TO THE COURT BY THE APPLICANT

- (1) The applicant undertakes to submit to such order (if any) as the Court may consider to be just for the payment of compensation (to be assessed by the Court or as it may direct) to any person (whether or not a party) affected by the operation of the order.
- (2) As soon as practicable, the applicant will file and serve upon you copies of:
  - (a) this order;
  - (b) the application for this order for hearing on the return date;
  - (c) the following material in so far as it was relied on by the applicant at the hearing when the order was made:
    - (i) affidavits (or draft affidavits);
    - (ii) exhibits capable of being copied;
    - (iii) any written submission; and
    - (iv) any other document that was provided to the Court.
  - (d) a transcript, or, if none is available, a note, of any exclusively oral allegation of fact that was made and of any exclusively oral submission that was put, to the Court;
  - (e) the originating process.
- (3) As soon as practicable, the applicant will cause anyone notified of this order to be given a copy of it.
- (4) The applicant will pay the reasonable costs of anyone other than you and the respondents which have been incurred as a result of this order, including the costs of finding out whether that person holds any of your assets.
- (5) If this order ceases to have effect the applicant will promptly take all reasonable steps to inform in writing anyone who has been notified of this order, or who the applicant has reasonable grounds for supposing may act upon this order, that it has ceased to have effect.
- (6) The applicant will not, without leave of the Court, use any information obtained as a result of this order for the purpose of any civil or criminal proceedings, either in or outside Australia, other than this proceeding except for the purposes of any police, regulatory authority or prudential disclosure.
- (7) The applicant will not, without leave of the Court, seek to enforce this order in any country outside Australia or seek in any country outside Australia an order of a similar nature or an order conferring a charge or other security against you or your assets.



## SCHEDULE B

### AFFIDAVITS RELIED ON

#### Name of deponent

- (1) Geoffrey Keith Anderson
- (2) Nicholas Anthony O'Brien

- (3) Caitlin Maria Murray

#### Date affidavit made

28 June 2021; 8 July 2021

27 June 2021; 1 July 2021

28 June 2021; 2 July 2021;  
7 July 2021; 8 July 2021; 12  
July 2021; 14 July 2021; 15  
July 2021; 25 August 2021

### NAME AND ADDRESS OF APPLICANTS' LAWYERS

The Applicants' lawyers are:

MinterEllison  
Governor Macquarie Tower  
Level 40, 1 Farrer Place  
Sydney NSW 2000

Attention: Caitlin Murray

[caitlin.murray@minterellison.com](mailto:caitlin.murray@minterellison.com) ; T +61 2 9921 8514 ; M +61 422 977 971 ; +61  
2 9921 8123 ref: CMM:1353397

**Funds in Court**  
**Supreme Court of Victoria**  
Level 5, 469 La Trobe Street  
Melbourne Victoria 3000  
Post: 210 William Street, Melbourne 3000  
T: 1300 039 390 F: 1300 039 388  
E: requests@fundsincourt.vic.gov.au  
W: www.fundsincourt.vic.gov.au



04 March 2022

Your Ref: NT.BA.206734  
Our Ref: 34137

NICHOLAS JAMES LAWYERS  
PO Box 200  
ESSENDON VIC 3040

By email to: [brittany@njlawyers.com.au](mailto:brittany@njlawyers.com.au)

Dear Solicitors,

A Certificate of Receipt pursuant to the Supreme Court Rules appears below.

**CERTIFICATE OF RECEIPT**

Type of Payment into Court: **TRUSTEE ACT - CF1**  
Date of last Receipt: **03/03/2022**  
Amount Received: **\$759,619.00**  
Common Fund No: **1**  
Account No: **86453-**  
Invested in the Name of: **1160 Glen Huntly Road Pty Ltd**  
Eligible for Payment-Out: **UPON FURTHER ORDER**

A handwritten signature in black ink, appearing to be "JK".

**LEGAL ADMINISTRATION TEAM**



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.

**Allens**

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Corner Hunter and Phillip Streets  
Sydney NSW 2000 Australia

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Sydney NSW 2001 Australia

ABN 47 702 595 758

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23 May 2022

Madgwicks Lawyers  
Level 6, 140 William Street  
Melbourne VIC 3000  
Attention: Sazz Nasimi/Alexandra Lawrence

**By email**

Dear Colleagues

**Sale proceeds of 6 Bulkara Street, Wagstaffe NSW**

We refer to the recent correspondence between the parties regarding the treatment of proceeds of the sale of the 6 Bulkara Street property and in particular your letter dated 18 May 2022 (**Letter**).

We are instructed to respond as follows:

- 1 In response to paragraph 3 of the Letter, the Receivers reject any suggestion that they have breached their agreement to consult with your client prior to executing the contract for sale regarding the 14 James Street properties (**14 James**). The Schedule to this letter lists the 35 pieces of correspondence between our respective offices relating to the sale of 14 James and/or matters related to such sale such as the removal of items which remained in 14A James Street. This correspondence includes, without limitation:
  - (a) 6 pieces of correspondence regarding your client's attempts to frustrate the Receivers' power of sale;
  - (b) 2 requests for your client to provide the Receivers with any information or contact details of any prospective purchasers to assist with the sale of 14 James;
  - (c) The provision of the valuation which the Receivers obtained of 14 James;
  - (d) A letter on 16 March 2022 which provided detail as to:
    - (i) The engagement of a selling agent and valuer;
    - (ii) The marketing recommendation received from the selling agent and valuer; and
    - (iii) The indicative timeline of the proposed EOI campaign;
  - (e) A letter on 28 April 2022 which:
    - (i) reiterated the sales and marketing campaign was due to close on 4 May 2022; and
    - (ii) informed your client of the number of individual enquires, issued contracts, inspections and interested parties.
- 2 Notwithstanding that extensive correspondence, your client has not engaged with the Receivers in relation to the sale (other than in relation to the contents of 14A James and access to the premises).

**Our Ref** 121031672-007:121031672  
KBPS 520196449v2 121031672 23.5.2022

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- 3 In response to paragraph 3(c) of your Letter, the Receivers reject any assertion that they did not take all reasonable care to sell 14 James for not less than market value or for the best price reasonably obtainable. By way of example:
- (a) The Receivers have incurred substantial costs in preparing 14 James for sale, including attending to the removal of: (i) a significant number of items which remained in the 14A James Street property at the time the Receivers were appointed; and (ii) timber, bricks, sheets of metal, pallets and vehicles which had been placed both within and outside the 14A James Street property preventing the Receivers' access to the property;
  - (b) The Receivers ran a 4.5 week sales and marketing campaign. As detailed in our letter of 28 April 2022, that campaign has resulted in a large volume of parties requesting copies of the information memorandum and contract and conducting inspections of the properties;
  - (c) The Receivers obtained a valuation which valued 14 James at \$5,430,000 if sold in one-line and \$6,035,000 if sold individually; and
  - (d) The Receivers accepted the highest offer (\$6,600,000) which was 21.5% and 9.4% above each respective valuation scenario.
- 4 In response to paragraph 4 of the Letter, the amount of \$9,808,169.94 is held solely on behalf of the Receivers in their capacity as Receivers of the 6 Bulkara Street property (as was made clear in our letter of 18 May 2022). As required by the Orders, separate controlled monies accounts must be held on behalf of the Receivers in their differing capacities (i.e. as Receivers of the 26 Edmonstone Road property, as Receivers of the 5 Bulkara Street property, as Receivers of the 6 Bulkara Street property and Receivers of the XOXO Yacht), meaning that any 'pooling' of such funds in a singular controlled monies account is not permissible.
- 5 In response to the remaining matters raised in the Letter:
- (a) Your client's proposal does not appear to us to reflect the priority of claims which would apply in the event the proprietary claims against 5 Bulkara Street Pty Ltd (In Liquidation) are successful. For example, it is not clear to us that the claims of Aksara (which has not advanced any monies to 5 Bulkara Street Pty Ltd (in Liquidation) but has taken a guarantee) could defeat valid proprietary claims. We do not anticipate that the parties making the proprietary claims would consent to your client's proposal;
  - (b) The Orders require the Receivers to hold the proceeds of the sale of the 6 Bulkara Street property (after the deduction of various costs) in a controlled monies account on behalf of the Receivers in their capacity as Receivers of the 6 Bulkara Street property. This equally applies to the proceeds of the sale of the other property captured by the Order. To that end, the proposals set out in your letters of 13 May and 18 May, suggest a course of action which would result in a breach of the Orders;
  - (c) Each property is owned by a different legal entity, which has its own creditors and liabilities. In the present context, the proceeds received by one registered proprietor, which itself has creditors, cannot be used to satisfy the liabilities of a different registered proprietor;
  - (d) The Letter suggests that your client's proposal would not prejudice the creditors the 5 Bulkara Street Pty Limited. However, it would prejudice the creditors of 6 Bulkara Street Pty Ltd (In Liquidation) and 26 Edmonstone Road Pty Ltd (In Liquidation) if their assets were used to satisfy unrelated third party liabilities; and
  - (e) The debts of 5 Bulkara Street Pty Ltd (In Liquidation) exceed its assets. In those circumstances, we do not see any benefit in delaying its sale.

Madgwicks Lawyers

Allens < Linklaters

6 For the reasons outlined above, the Receivers do not agree to your client's proposal.

Yours faithfully



**Chris Prestwich**  
Partner  
Allens  
Chris.Prestwich@allens.com.au  
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**Kirsty Prinsloo**  
Managing Associate  
Allens  
Kirsty.Prinsloo@allens.com.au  
T +61 2 9230 4735

CC: MinterEllison, Caitlin Murray  
Dentons, David Sharpe

## Gemma Jakobovic

---

**From:** Alexandra Lawrence  
**Sent:** Friday, 3 June 2022 12:45 PM  
**To:** Kang, Justin; Canny, Elizabeth; Strack, Tamara  
**Cc:** Sazz Nasimi; Melissa Passarelli; McTaggart, Caitlin; Prinsloo, Kirsty; Prestwich, Chris; Forum (Allens); Caitlin Murray; Andrew Clarke; Konfir Kabo  
**Subject:** 5 Bulkara Street, Wagstaffe NSW 2257 [MADG-CURRENT\_MATTERS.FID668660]  
**Attachments:** 220602 Letter from Madgwicks to Dentons(4827789.4).pdf

Dear Colleagues,

Please see the letter **attached**.

Kind regards,

**Alexandra Lawrence**  
Associate

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LAWYERS

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

T: +61 3 9242 4720 E: [Alexandra.Lawrence@madgwicks.com.au](mailto:Alexandra.Lawrence@madgwicks.com.au)

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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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W: madgwicks.com.au



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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**Gemma Jakobovic**

---

**From:** Claire Latham <Claire.Latham@minterellison.com>  
**Sent:** Wednesday, 8 June 2022 11:25 AM  
**To:** Alexandra Lawrence; Sazz Nasimi; Melissa Passarelli; konfir.kabo@gmail.com; justin.kang@dentons.com; elizabeth.canny@dentons.com; tamara.strack@dentons.com; Prestwich, Chris; Prinsloo, Kirsty; caitlin.mctaggart@allens.com.au; forumallens@allens.com.au  
**Cc:** Caitlin Murray; PROJECT OLYMPUS  
**Subject:** 5 Bulkara Street, Wagstaffe NSW 2257  
**Attachments:** Letter to Madgwicks 8 Jun 2022.PDF

Dear Colleagues

Please see **attached** our letter of today's date.

Kind regards

\_\_\_\_\_

**Claire Latham**

Senior Associate

T +61 2 9921 4280 | M +61 420 759 930

claire.latham@minterellison.com

**MinterEllison** Governor Macquarie Tower 1 Farrer Place Sydney NSW 2000

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MinterEllison respectfully acknowledges the Traditional Custodians on whose lands we live, work and learn. We offer our respects to Elders past and present.

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Sensitive: Legal

# 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.

MinterEllison.

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](mailto:konfir.kabo@gmail.com)  
Justin Kang [justin.kang@dentons.com](mailto:justin.kang@dentons.com)  
Chris Prestwich [chris.prestwick@allens.com.au](mailto:chris.prestwick@allens.com.au)  
Kirsty Prinsloo [kirsty.prinsloo@allens.com.au](mailto:kirsty.prinsloo@allens.com.au)

## Gemma Jakobovic

---

**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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