

NOTICE OF FILING

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Details of Filing

Document Lodged: Defence - Form 33 - Rule 16.32
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: 20/04/2022 4:01:27 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 33
Rule 16.32

Defence of the Forty-Fifth Respondent

No. NSD616 of 2021

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

WESTPAC BANKING CORPORATION ABN 33 007 457 141 and Anor

Applicants

GIOVANNI JOHN TESORIERO

Forty-Fifth Respondent

In response to the Applicants' Second Further Amended Statement of Claim dated 5 November 2021, the Forty-Fifth Respondent (**Mr Tesoriero Snr**) says:

NB: Unless otherwise stated:

- A. *terms defined in the Second Further Amended Statement of Claim have the same meaning when used in this Defence;*
- B. *headings and definitions are adopted from the Second Further Amended Statement of Claim for ease of reference and are not treated as part of the pleadings;*
- C. *for the avoidance of doubt, Mr Tesoriero Snr does not plead to the headings or definitions employed by the Applicants and in particular does not plead to (and does not admit) headings or definitions which incorporate characterisations of conduct.*

Filed on behalf of (name & role of party)	Filed on behalf of the Forty-Fifth Respondent
Prepared by (name of person/lawyer)	Prepared by Alexandra Lawrence
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A. PARTIES

1-34R He admits paragraphs 1 to 34R.

B. THE EQWE / FORUM PROGRAMME

35-54 He does not know and therefore does not admit paragraphs 35 to 54.

C. THE SCHEME

55-58 He does not know and therefore does not admit paragraphs 55 to 58.

D. THE FRAUDULENT TRANSACTIONS

59 - 1830 He does not know and therefore does not admit paragraphs 59 to 1830.

E. THE DISCOVERY OF THE SCHEME

1831-1833 He does not know and therefore does not admit paragraphs 1831 to 1833.

F-WW. THE CLAIMS AGAINST THE 1ST TO 44TH RESPONDENTS

1834-2651 It does not know and therefore does not admit paragraphs 1834 to 2651.

XX. THE CLAIM AGAINST MR TESORIERO SNR**(1) Funds held on trust and knowing receipt**

2652. He does not know and therefore does not admit paragraph 2652.

2653. He does not know and therefore does not admit paragraph 2653.

2654. As to paragraph 2654:

(a) he does not know and therefore does not admit that he received amounts paid pursuant to Transactions 1 to 100 or NZ1 to NZ36;

(b) he denies that he had any knowledge whatsoever that any amounts he received were derived from Transactions 1 to 100 or NZ1 to NZ36;

(c) in relation to any such funds, he denies that he:

- (i) held those funds, the traceable proceeds of those funds, or any property he converted those funds into, on trust for Westpac;
 - (ii) holds on trust such of those funds or the traceable proceeds of those funds which it holds or of which it has the benefit;
- (d) he says further that, if he did receive any such funds, then those funds (the **Tesoriero Return**) were paid to him by way of a return on a capital investment made in the Forum group of companies by Mr Tesoriero or others on his behalf.

Particulars

Mr Tesoriero's capital investment in the Forum group of companies included the following payments (at least):

- (i) \$1,000,000 paid on around 4 February 2013;
- (ii) \$200,000 paid on around 4 October 2013;
- (iii) \$60,000 paid on around 4 October 2013;
- (iv) \$1,500,000 paid on around 2 June 2014;
- (v) \$2,109,755 paid on around 1 May 2017;
- (vi) \$2,000,000 paid on around 2 May 2017.

2655. As to paragraph 2655:

- (a) he does not know and therefore does not admit that he received amounts paid pursuant to Transactions 1 to 100 or NZ1 to NZ36;
- (b) if he received any such funds, he:
 - (i) denies that any such funds were property of someone other than him or Mr Tesoriero;
 - (ii) says further that any such funds formed part of the Tesoriero Return, and refers to and repeats the matters pleaded and particularised in paragraph 2654 above;

- (c) in relation to 286 Carlisle St, he admits that the amounts were paid by FGFS into a bank account in the name of 286 Carlisle St in the period 26 February 2021 to 24 June 2021, but:
- (i) does not know and therefore does not admit that that amount was money (or the traceable proceeds of money) stolen from Westpac and WNZL;
 - (ii) says further that he did not open that bank account, and did not request or authorise any money to be paid into it by FGFS, or out of it on behalf of 286 Carlisle St, and was not aware of any such payments at or around the time they were made;
 - (iii) says further that at no material time was Mr Papas a director of 286 Carlisle St or authorised to act on its behalf;
 - (iv) says further that he was not aware of the existence of that bank account at any relevant time;
- (d) otherwise denies each and every allegation therein.

2656. He denies paragraph 2656.

Particulars

He refers to and repeats the matters pleaded and particularised in paragraphs 2654 and 2655 above.

(2) Tort of unlawful means conspiracy

2657. He does not know and therefore does not admit paragraph 2657.

2658. He does not know and therefore does not admit paragraph 2658.

2659. As to paragraph 2659, he:

- (a) refers to and repeats the matters pleaded and particularised in paragraph 2655(c) above;
- (b) otherwise denies each and every allegation therein.

2660. He denies paragraph 2660.

Particulars

He refers to and repeats the matters pleaded and particularised in paragraph 2659 above.

2661. He admits paragraph 2661.
2662. He does not know and therefore does not admit paragraph 2662.
2663. He denies paragraph 2663.

Particulars

He refers to and repeats the matters pleaded and particularised in paragraphs 2654 and 2659 above.

2664. As to paragraph 2664, he:
- (a) does not know and therefore does not admit that he received amounts derived from Transactions 1 to 100 or NZ1 to NZ36;
 - (b) says further that any such funds he received formed part of the Tesoriero Return, and refers to and repeats the matters pleaded and particularised in paragraph 2654 above;
 - (c) denies that he managed 286 Carlisle St in furtherance of the Scheme Agreement;
 - (d) denies that 286 Carlisle St was financed in whole or in part through amounts stolen from Westpac and WNZL in the period 26 February 2021 to 24 June 2021;
 - (e) denies that 286 Carlisle St received amounts derived from Transactions 1 to 100 or NZ1 to NZ36;
 - (f) refers to and repeats the matters pleaded and particularised in paragraph 2655(c) above;
 - (g) otherwise denies each and every allegation contained therein.
2665. He denies paragraph 2665.

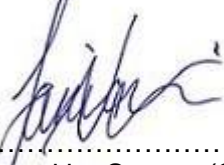
Particulars

He refers to and repeats the matters pleaded and particularised in paragraphs 2663 and 2664 above.

YY-BBB. THE CLAIMS AGAINST THE 46TH TO 49TH RESPONDENTS

2666- He does not know and therefore does not admit paragraphs 2666 to 2711.
2711

Date: 20 April 2022



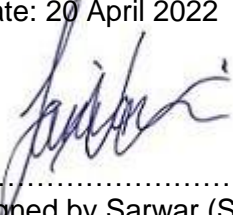
.....
Signed by Sarwar (Sazz) Nasimi
Lawyer for the Forty-Fifth Respondent

This pleading was prepared by Paul Hayes QC and Michael O'Haire.

Certificate of lawyer

I, Sarwar (Sazz) Nasimi, certify to the Court that, in relation to the defence filed on behalf of the Forty-Fifth Respondent, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: 20 April 2022



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Signed by Sarwar (Sazz) Nasimi
Lawyer for the Forty-Fifth Respondent