

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 20/04/2022 3:35:11 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: Defence - Form 33 - Rule 16.32
File Number: NSD681/2021
File Title: SMBC LEASING AND FINANCE, INC. ARBN 602 309 366 v FORUM ENVIRO (AUST) PTY LTD (VOLUNTARY ADMINISTRATORS APPOINTED) ACN 607 484 364 & ORS
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



Sia Lagos

Dated: 20/04/2022 3:43:10 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.



Defence of the Twenty-Fifth Respondent

No. NSD681 of 2021

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

SMBC Leasing and Finance, Inc. Sydney Branch ARBN 602 309 366

Applicant

64-66 Berkeley St Hawthorn Pty Ltd ACN 643 838 662

Twenty-Fifth Respondent

In response to the Applicant's Amended Statement of Claim dated 5 November 2021, the Twenty-Fifth Respondent (**64-66 Berkeley St**) says:

NB: Unless otherwise stated:

- A. *terms defined in the Amended Statement of Claim have the same meaning when used in this Defence;*
- B. *headings and definitions are adopted from the Amended Statement of Claim for ease of reference and are not treated as part of the pleadings;*
- C. *for the avoidance of doubt, 64-66 Berkeley St does not plead to the headings or definitions employed by the Applicant 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 Twenty-Fifth Respondent
Prepared by (name of person/lawyer)	Prepared by Alexandra Lawrence
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A. PARTIES

1-4V It admits paragraphs 1 to 4V.

B. THE MASTER AGREEMENTS

5-11 It does not know and therefore does not admit paragraphs 5 to 11.

C. THE FRAUDULENT SCHEME

12-14 It does not know and therefore does not admit paragraphs 12 to 14.

D. THE FRAUDULENT TRANSACTIONS

15-88 It does not know and therefore does not admit paragraphs 15 to 88.

E-BB. CLAIMS AGAINST OTHER PARTIES

89-533 It does not know and therefore does not admit paragraphs 89 to 533.

CC. THE CLAIM AGAINST 64-66 BERKELEY ST**(1) Funds held on trust**

534 It does not know and therefore does not admit paragraph 534.

535 As to paragraph 535:

- (a) it does not know and therefore does not admit that it received amounts paid by SMBC L&F pursuant to the 2018 Transaction Documents and the 2020 Transaction Documents;
- (b) it denies that it had any knowledge whatsoever that any monies it received were derived from the 2018 Transaction Documents or the 2020 Transaction Documents;
- (c) it says further that, if it did receive any such funds, then those funds (the **Tesoriero Return**) were paid to it 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.

Further particulars may be provided after discovery.

- (d) in relation to any such funds that it received as part of the Tesoriero Return, it denies that it:
 - (i) held those funds, the traceable proceeds of those funds, or any property it converted those funds into, on trust for SMBC L&F;
 - (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;
- (e) in relation to any other such funds, it does not know and therefore does not admit that it:
 - (i) held those funds, the traceable proceeds of those funds, or any property it converted those funds into, on trust for Westpac;
- (f) holds on trust such of those funds or the traceable proceeds of those funds which it holds or of which it has the benefit.

536 As to paragraph 536:

- (a) it refers to and repeats paragraphs 535(a) and (b) above;
- (b) in relation to any such amounts that it received as part of the Tesoriero Return, it
 - (i) denies that it was obliged to account to SMBC L&F for those amounts on and from the dates on which it received the amounts;
 - (ii) refers to and repeats the matters pleaded and particularised in paragraph 535(c) above;

- (c) it otherwise does not know and therefore does not admit each and every allegation therein.

537 As to paragraph 537:

- (a) it refers to and repeats paragraphs 535(a) and (b) above;
- (b) in relation to any such amounts that it received as part of the Tesoriero Return, it
 - (i) denies that it holds on trust or is liable to account for those amounts or the traceable proceeds of those amounts or is liable to account to SMBC L&F for the balance of any funds that it has received and paid away;
 - (ii) refers to and repeats the matters pleaded and particularised in paragraph 535(c) above;
- (c) it otherwise does not know and therefore does not admit each and every allegation therein.

538 As to paragraph 538:

- (a) it refers to and repeats paragraphs 535(a) and (b) above;
- (b) in relation to any such amounts that it received as part of the Tesoriero Return, it
 - (i) denies that it is liable to pay those amounts or the traceable proceeds of those amounts to SMBC L&F as money had and received to SMBC L&F's use;
 - (ii) refers to and repeats the matters pleaded and particularised in paragraph 535(c) above;
- (c) it otherwise does not know and therefore does not admit each and every allegation therein.

Date: 20 April 2022



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