

NOTICE OF FILING

Details of Filing

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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

Registrar

Important Information

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 of the filing of the document is determined pursuant to the Court's Rules.



Annexure B

Addendum to the Amended Statement of Claim

Paragraphs 2, and 4W, 4X, 4Y and 539-581 of the Amended Statement of Claim be amended to be in the following terms:

2. The Second Respondent (**Mr Papas**):
 - (a) was, at all material times, ordinarily resident in Australia;
 - (b) is and was at all material times a person for the purposes of sections 18 and 29 of the ACL;
 - (c) is and was at all material times a person for the purposes of sections 12DA and 12DB of the ASIC Act;
 - (d) is and was at all material times a person for the purposes of section 1041H of the Corporations Act;
 - (e) was, at all material times, the sole director and secretary of the ~~Second-First~~ Respondent, Forum Enviro (Aust) Pty Ltd (in ~~prev~~-liq) (ACN 607 484 364) (**FEA**);
 - (f) was, at all material times, the sole director and secretary of the Third Respondent, Forum Enviro Pty Ltd (ACN 168 709 840) (in ~~prev~~-liq) (**FE**);
 - (g) at all material times, was a director or shareholder of each of the following companies:
 - (i) the Twenty-First Respondent, 5 Bulkara Street Pty Ltd (in liq) (ACN 630 982 160) (5 Bulkara St); and
 - (ii) the Twenty-Second Respondent, 6 Bulkara Street Pty Ltd (in liq) (ACN 639 734 473) (6 Bulkara St),
 - (iii) 14 James Street Pty Ltd (in liq) (ACN 638 449 206);
 - (iv) the Twentieth Respondent, 26 Edmonstone Road Pty Ltd (in liq) (ACN 622 944 129) (**26 Edmonstone Road**);
 - (v) the Twenty-Eighth Respondent, Aramia Holdings Pty Ltd (in liq) (ACN 114 958 717) (**Aramia Holdings**);

- (vi) Autonomous Energy Pty Ltd (ACN 113 593 383);
- (vii) Eros Management Pty Ltd (ACN 622 298 346) (**Eros Management**);
- (viii) Forum Direct Pty Ltd (in liq) (ACN 054 890 710);
- (ix) the Eighth Respondent, Forum Fleet Pty Limited (in liq) (ACN 155 440 994) (**Forum Fleet**);
- (x) the Sixth Respondent, Forum Finance Pty Limited (in liq) (ACN 153 301 172) (**FF**);
- (xi) Forum Group (QLD) Pty Ltd (in liq) (ACN 103 609 678);
- (xii) Forum Group (VIC) Pty Ltd (in liq) (ACN 153 062 018);
- (xiii) the Fifth Respondent, Forum Group Pty Ltd (in liq) (ACN 153 336 997) (**FG**);
- (xiv) the Fourth Respondent, Forum Group Financial Services Pty Ltd (in liq) (ACN 623 033 705) (**FGFS**);
- (xv) the Ninth Respondent, Imagetec Financial Services Pty Ltd (in liq) (ACN 111 978 182) (**Imagetec FS**);
- (xvi) the Tenth Respondent, Imagetec Solutions Australia Pty Ltd (in liq) (ACN 074 715 718) (**Imagetec Solutions**);
- (xvii) Intrashield Investment Group Pty Ltd (in liq) (ACN 645 578 829);
- (xviii) Intrashield Financial Services Pty Ltd (ACN 650 501 321)
- (xix) the Eleventh Respondent, Intrashield Pty Ltd (in liq) (ACN 133 426 534) (**Intrashield**);
- (xx) Iugis Investments Pty Ltd (in liq) (ACN 647 627 745) (**Iugis Investments**);
- (xxi) the Thirteenth Respondent, Iugis Pty Ltd (in liq) (ACN 632 882 243) (**Iugis**);
- (xxii) the Fourteenth Respondent, Iugis Waste Solutions Pty Ltd (in liq) (ACN 647 212 299) (**Iugis Waste Solutions**);
- (xxiii) Onesource Australia Holdings Pty Limited (in liq) (ACN 120 463 541);
- (xxiv) Orca Enviro Solutions Pty Ltd (in liq) (ACN 626 552 645);
- (xxv) Orca Enviro Systems Pty Ltd (in liq) (ACN 627 597 782);
- (xxvi) Smartprint Fleet Management Pty Ltd (in liq) (ACN 132 807 080);
- (xxvii) the Twenty-Seventh Respondent, Palante Pty Ltd (ACN 135 344 151) (**Palante**);
- (xxviii) ifish finance Pty Ltd (ACN 118 683 542);

- (xxix) the Twelfth Respondent, Spartan Consulting Group Pty Ltd (in liq) (ACN 168 989 544) (**Spartan**); and
 - (xxx) the Seventh Respondent, The Forum Group of Companies Pty Ltd (in liq) (ACN 151 964 626) (**TFGC**);
 - (xxxii) the Fifteenth Respondent, Iugis Holdings Limited (UK Company No. 11123437) (**Iugis Holdings**);
 - (xxxiii) the Sixteenth Respondent, Iugis (UK) Limited (UK Company No. 10745974) (**Iugis UK**);
 - (xxxiv) the Seventeenth Respondent, Iugis Hellas IKE (registered in the Hellenic Republic) (**Iugis Hellas**);
 - (xxxv) the Eighteenth Respondent, Iugis Energy SA (registered in the Hellenic Republic) (**Iugis Energy**); and
 - (xxxvi) the Nineteenth Respondent, Mazcon Investments Hellas IKE (registered in the Hellenic Republic) (**Mazcon**),
- (together, the **Papas Related Entities**).

4W. The Twenty-Sixth Respondent, 8-12 Natalia Ave Oakleigh Pty Ltd (in liq) (ACN 643 838 662) (8-12 Natalia Avenue):

- (a) is a company incorporated within Australia;
- (b) is able to be sued;
- (c) was duly registered as a corporation under the Corporations Act on 26 August 2020;
- (d) has had Mr Tesoriero as its sole director and shareholder since 26 August 2020; and
- (e) has the Liquidators as its joint and several liquidators, who were appointed on 2 November 2022.

4X. The Twenty-Seventh Respondent, Palante:

- (a) is a company incorporated within Australia;
- (b) is able to be sued;
- (c) was duly registered as a corporation under the Corporations Act on 11 February 2009; and

- (d) has had Mr Papas as its sole director and shareholder since 6 March 2018;
- (e) has the Liquidators as its joint and several liquidators, who were appointed on 2 February 2022.

4Y. The Twenty-Seventh Respondent, Palante:

- (a) is a company incorporated within Australia;
- (b) is able to be sued;
- (c) was duly registered as a corporation under the Corporations Act on 11 February 2009; and
- (d) has had Mr Papas as its sole director and shareholder since 27 June 2005;
- (e) has the Liquidators as its joint and several liquidators, who were appointed on 28 July 2021.

DD. THE CLAIM AGAINST 8-12 NATALIA AVENUE

(1) Funds held on trust

539. In breach of trust, Flexirent and FEA, both directly or through intermediaries, transferred to 8-12 Natalia Avenue at least \$529,208 of funds wholly or partly traceable to amounts paid by SMBC L&F pursuant to the 2018 Transaction Documents and the 2020 Transaction Documents.

540. 8-12 Natalia Avenue:

- (a) received all funds wholly or partly traceable to amounts paid by SMBC L&F pursuant to the 2018 Transaction Documents and the 2020 Transaction Documents as a volunteer;
- (a) held on trust for SMBC L&F all funds, or the traceable proceeds of those funds, that it has received from the payments made pursuant to the 2018 Transaction Documents and the 2020 Transaction Documents and any property that it converted those funds into; and
- (b) holds on trust such of those funds or the traceable proceeds of those funds which it holds or of which it has the benefit.

Particulars

Particulars of SMBC L&F's tracing claim will be provided in due course.

541. On and from the dates on which it received any amounts paid pursuant to the 2018 Transaction Documents and the 2020 Transaction Documents, 8-12 Natalia Avenue was obliged to account to SMBC L&F for each of those amounts.

542. 8-12 Natalia Avenue holds on trust or is liable to account for those amounts or the traceable proceeds of those amounts and is liable to account to SMBC L&F for the balance of any funds that it has received and paid away.

Particulars

Particulars of SMBC L&F's tracing claim will be provided in due course.

543. Alternatively, 8-12 Natalia Avenue 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.

EE. THE CLAIM AGAINST PALANTE

(1) Funds held on trust

544. Palante:

- (a) held on trust for SMBC L&F all funds, or the traceable proceeds of those funds, that it has received from the payments made pursuant to the 2018 Transaction Documents and the 2020 Transaction Documents and any property that it converted those funds into; and
- (b) holds on trust such of those funds or the traceable proceeds of those funds which it holds or of which it has the benefit.

Particulars

Particulars of SMBC L&F's tracing claim will be provided in due course.

545. On and from the dates on which it received any amounts paid pursuant to the 2018 Transaction Documents and the 2020 Transaction Documents, Palante was obliged to account to SMBC L&F for each of those amounts.

546. Palante holds on trust or is liable to account for those amounts or the traceable proceeds of those amounts and is liable to account to SMBC L&F for the balance of any funds that it has received and paid away.

Particulars

Particulars of SMBC L&F's tracing claim will be provided in due course.

547. Alternatively, Palante 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.

(2) Tort of unlawful means conspiracy

548. On a date unknown to SMBC L&F but by no later than 6 August 2018, the Scheme Agreement was reached between Mr Papas and diverse others to devise and implement the Scheme.

549. Palante became a party to the Scheme Agreement by reason of the knowledge and control of it by Mr Papas as a co-conspirator and the conduct pleaded in paragraph 551.

500. The Scheme Agreement was carried into effect by the 2018 Transaction Documents and the 2020 Transaction Documents as set out above.

551. In furtherance of the Scheme Agreement, Palante:

- (a) received money from payments made by SMBC L&F under the 2018 Transaction Documents and the 2020 Transaction Documents pursuant to the Scheme Agreement; and
- (b) in accordance with the purpose of the Scheme, paid some or all of the money received from SMBC L&F away for its own purposes or to the benefit of the other conspirators.

Particulars

Palante received at least \$334,895 in funds wholly or partly traceable to payments made by SMBC L&F pursuant to the 2018 and 2020 Transactions Documents.

552. As a consequence of the actions taken by Palante in furtherance of the Scheme Agreement, SMBC L&F has suffered loss and damage.

Particulars

SMBC L&F's loss and damage is the amount that it advanced to Flexirent pursuant to the 2018 MRASA and the amount that it advanced to FEA pursuant to the 2020 MRASA (totalling \$113,703,623.61) less the amounts it has received purportedly as payments from Veolia but which was in fact paid by FEA as part of the concealment of the Scheme (\$25,696,000.00) which leaves an outstanding loss of \$88,007,623.61.

(3) Knowing receipt

553. In breach of trust, Flexirent and FEA, both directly or through intermediaries, transferred to Palante at least \$334,895 of funds wholly or partly traceable to amounts paid by SMBC L&F pursuant to the 2018 Transaction Documents and the 2020 Transaction Documents.

554. As the sole director and secretary of Palante, the knowledge of Mr Papas was the knowledge of Palante.

555. Palante knew (or, in the alternative, ought reasonably to have known or, in the further alternative, knew circumstances which would have disclosed to an honest and reasonable person in his position) that:

- (a) the amounts paid in relation to the 2018 Transaction Documents were dishonestly obtained by FE and paid out by Flexirent in breach of its obligations to SMBC L&F as trustee set out at paragraph 37;
- (b) the amounts paid in relation to the 2020 Transaction Documents were dishonestly obtained by FEA and paid out by FEA in breach of its obligations to SMBC L&F as trustee set out at paragraph 86;
- (c) the amounts remained the property of SMBC L&F and were not permitted to be dispersed to anyone other than SMBC L&F;

because it was aware of the following facts, matters and circumstances:

- (d) the amounts that FE received from Flexirent and FEA received from SMBC L&F were obtained pursuant to the Scheme and pursuant to the false and fraudulent 2018 Transaction Documents and the 2020 Transaction Documents;
- (e) FE and FEA had no legitimate business which would entitle them to use themselves the amounts that they received from SMBC L&F;

- (f) any amounts that FE and FEA received pursuant to the the 2018 Transaction Documents and the 2020 Transaction Documents were to finance the acquisition of assets for Veolia and were not amounts to which FE or FEA were entitled themselves to use and pay away to their related parties;
- (g) Mr Papas, Mr Tesoriero and the Papas Related Entities were receiving substantial payments traceable to the funds paid by SMBC L&F pursuant to the 2018 Transaction Documents and the 2020 Transaction Documents, which they had no legitimate basis to receive.

556. Palante holds on trust or is liable to account to SMBC L&F for the funds (and the traceable proceeds of the funds) that it has received, or received and dissipated, or pay equitable compensation.

(4) Knowing assistance

557. From 6 August 2018 to at least 21 May 2021, Palante was aware of the Scheme and its purpose because its sole director and secretary had devised it and set about implementing and giving effect to it.

558. Palante knew (or, in the alternative, ought reasonably to have known or, in the further alternative, knew circumstances which would have disclosed to an honest and reasonable person in his position) that:

- (a) the amounts paid in relation to the 2018 Transaction Documents were dishonestly obtained by FE and paid out by Flexirent in breach of its obligations to SMBC L&F as trustee set out at paragraph 37;
- (b) the amounts paid in relation to the 2020 Transaction Documents were dishonestly obtained by FEA and paid out by FEA in breach of its obligations to SMBC L&F as trustee set out at paragraph 86;
- (c) the amounts remained the property of SMBC L&F and were not permitted to be dispersed to anyone other than SMBC L&F;

because it was aware of the following facts, matters and circumstances:

- (d) the amounts that FE received from Flexirent and FEA received from SMBC L&F were obtained pursuant to the Scheme and pursuant to the false and fraudulent 2018 Transaction Documents and the 2020 Transaction Documents;

- (e) FE and FEA had no legitimate business which would entitle them to use themselves the amounts that they received from SMBC L&F;
- (f) any amounts that FE and FEA received pursuant to the 2018 Transaction Documents and the 2020 Transaction Documents were to finance the acquisition of assets for Veolia and were not amounts to which FE or FEA were entitled themselves to use and pay away to their related parties; and
- (g) Mr Papas, Mr Tesoriero and the Papas Related Entities were receiving substantial payments traceable to the funds paid by SMBC L&F pursuant to the 2018 Transaction Documents and the 2020 Transaction Documents, which they had no legitimate basis to receive.

559. Palante holds on trust or is liable to account to SMBC L&F for the funds (and the traceable proceeds of the funds) that it has received, or received and dissipated, or pay equitable compensation.

560. With the knowledge identified in paragraphs 557 and 558 and through its conduct in:

- (a) directly or indirectly receiving money from Flexirent under the 2018 MRASA and from FEA under the 2020 MRASA pursuant to the Scheme Agreement; and
- (b) in accordance with the purpose of the Scheme, paying some or all of the money received from SMBC L&F away for its own purposes or to the benefit of the other conspirators.

Palante knowingly assisted the breaches of the obligations owed by FEA as trustees.

561. By reason of the knowing assistance of Palante, SMBC L&F has suffered loss and damage.

Particulars

SMBC L&F's loss and damage is the amount that it advanced to Flexirent pursuant to the 2018 MRASA and the amount that it advanced to FEA pursuant to the 2020 MRASA (totalling \$113,703,623.61) less the amounts it has received purportedly as payments from Veolia but which was in fact paid by FEA as part of the concealment of the Scheme (\$25,696,000.00) which leaves an outstanding loss of \$88,007,623.61

562. Palante is liable to pay equitable compensation to SMBC L&F with respect to the losses occasioned by reason of the Scheme.

EE. THE CLAIM AGAINST ARAMIA HOLDINGS

(1) Funds held on trust

563. Aramia Holdings:

- (a) held on trust for SMBC L&F all funds, or the traceable proceeds of those funds, that it has received from the payments made pursuant to the 2018 Transaction Documents and the 2020 Transaction Documents and any property that it converted those funds into; and
- (b) holds on trust such of those funds or the traceable proceeds of those funds which it holds or of which it has the benefit.

Particulars

Particulars of SMBC L&F's tracing claim will be provided in due course.

564. On and from the dates on which it received any amounts paid pursuant to the 2018 Transaction Documents and the 2020 Transaction Documents, Aramia Holdings was obliged to account to SMBC L&F for each of those amounts.

565. Aramia Holdings holds on trust or is liable to account for those amounts or the traceable proceeds of those amounts and is liable to account to SMBC L&F for the balance of any funds that it has received and paid away.

Particulars

Particulars of SMBC L&F's tracing claim will be provided in due course.

566. Alternatively, Aramia Holdings 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.

(2) Tort of unlawful means conspiracy

567. On a date unknown to SMBC L&F but by no later than 6 August 2018, the Scheme Agreement was reached between Mr Papas and diverse others to devise and implement the Scheme.

568. Aramia Holdings became a party to the Scheme Agreement by reason of the knowledge and control of it by Mr Papas as a co-conspirator and the conduct pleaded in paragraph 570.

569. The Scheme Agreement was carried into effect by the 2018 Transaction Documents and the 2020 Transaction Documents as set out above.

570. In furtherance of the Scheme Agreement, Aramia Holdings:

- (a) received money from payments made by SMBC L&F under the 2018 Transaction Documents and the 2020 Transaction Documents pursuant to the Scheme Agreement; and
- (b) in accordance with the purpose of the Scheme, paid some or all of the money received from SMBC L&F away for its own purposes or to the benefit of the other conspirators.

Particulars

Aramia Holdings received at least \$101,914 in funds wholly or partly traceable to payments made by SMBC L&F pursuant to the 2018 and 2020 Transactions Documents.

571. As a consequence of the actions taken by Aramia Holdings in furtherance of the Scheme Agreement, SMBC L&F has suffered loss and damage.

Particulars

SMBC L&F's loss and damage is the amount that it advanced to Flexirent pursuant to the 2018 MRASA and the amount that it advanced to FEA pursuant to the 2020 MRASA (totalling \$113,703,623.61) less the amounts it has received purportedly as payments from Veolia but which was in fact paid by FEA as part of the concealment of the Scheme (\$25,696,000.00) which leaves an outstanding loss of \$88,007,623.61.

(3) Knowing receipt

572. In breach of trust, Flexirent and FEA, both directly or through intermediaries, transferred to Aramia Holdings at least \$101,914 of funds wholly or partly traceable to amounts paid by SMBC L&F pursuant to the 2018 Transaction Documents and the 2020 Transaction Documents.

573. As the sole director and secretary of Aramia Holdings, the knowledge of Mr Papas was the knowledge of Aramia Holdings.

574. Aramia Holdings knew (or, in the alternative, ought reasonably to have known or, in the further alternative, knew circumstances which would have disclosed to an honest and reasonable person in his position) that:

- (a) the amounts paid in relation to the 2018 Transaction Documents were dishonestly obtained by FE and paid out by Flexirent in breach of its obligations to SMBC L&F as trustee set out at paragraph 37;
- (b) the amounts paid in relation to the 2020 Transaction Documents were dishonestly obtained by FEA and paid out by FEA in breach of its obligations to SMBC L&F as trustee set out at paragraph 86;
- (c) the amounts remained the property of SMBC L&F and were not permitted to be dispersed to anyone other than SMBC L&F;

because it was aware of the following facts, matters and circumstances:

- (d) the amounts that FE received from Flexirent and FEA received from SMBC L&F were obtained by them pursuant to the Scheme and pursuant to the false and fraudulent 2018 Transaction Documents and the 2020 Transaction Documents;
- (e) FE and FEA had no legitimate business which would entitle them to use themselves the amounts that they received from SMBC L&F;
- (f) any amounts that FE and FEA received pursuant to the the 2018 Transaction Documents and the 2020 Transaction Documents were to finance the acquisition of assets for Veolia and were not amounts to which FE or FEA were entitled themselves to use and pay away to their related parties;
- (g) Mr Papas, Mr Tesoriero and the Papas Related Entities were receiving substantial payments traceable to the funds paid by SMBC L&F pursuant to the 2018 Transaction Documents and the 2020 Transaction Documents, which they had no legitimate basis to receive.

575. Aramia Holdings holds on trust or is liable to account to SMBC L&F for the funds (and the traceable proceeds of the funds) that it has received, or received and dissipated, or pay equitable compensation.

(4) Knowing assistance

576. From 6 August 2018 to at least 21 May 2021, Aramia Holdings was aware of the Scheme and its purpose because its sole director and secretary had devised it and set about implementing and giving effect to it.

577. Aramia Holdings knew (or, in the alternative, ought reasonably to have known or, in the further alternative, knew circumstances which would have disclosed to an honest and reasonable person in its position) that:

- (a) the amounts paid in relation to the 2018 Transaction Documents were dishonestly obtained by FE and paid out by Flexirent in breach of its obligations to SMBC L&F as trustee set out at paragraph 37;
- (b) the amounts paid in relation to the 2020 Transaction Documents were dishonestly obtained by FEA and paid out by FEA in breach of its obligations to SMBC L&F as trustee set out at paragraph 86;
- (c) the amounts remained the property of SMBC L&F and were not permitted to be dispersed to anyone other than SMBC L&F;

because it was aware of the following facts, matters and circumstances:

- (d) the amounts that FE received from Flexirent and FEA received from SMBC L&F were obtained by them pursuant to the Scheme and pursuant to the false and fraudulent 2018 Transaction Documents and the 2020 Transaction Documents;
- (e) FEA had no legitimate business which would entitle them to use the amounts received from SMBC L&F;
- (f) any amounts that FE and FEA received pursuant to the 2020 Transaction Documents were to finance the acquisition of assets for Veolia and were not amounts to which FEA was to use and pay away to their related parties; and
- (g) Mr Papas, Mr Tesoriero and the Papas Related Entities were receiving substantial payments traceable to the funds paid by SMBC L&F pursuant to the 2018 Transaction Documents and the 2020 Transaction Documents, which they had no legitimate basis to receive.

578. Aramia Holdings holds on trust or is liable to account to SMBC L&F for the funds (and the traceable proceeds of the funds) that it has received, or received and dissipated, or pay equitable compensation.

579. With the knowledge identified in paragraphs 576 and 577 and through its conduct in:

- (a) directly or indirectly receiving money from Flexirent under the 2018 MRASA and from FEA under the 2020 MRASA pursuant to the Scheme Agreement; and
- (b) in accordance with the purpose of the Scheme, paying some or all of the money received from SMBC L&F away for its own purposes or to the benefit of the other conspirators.

Aramia Holdings knowingly assisted the breaches of the obligations owed by FEA as trustees.

580. By reason of the knowing assistance of Aramia Holdings, SMBC L&F has suffered loss and damage.

Particulars

SMBC L&F's loss and damage is the amount that it advanced to Flexirent pursuant to the 2018 MRASA and the amount that it advanced to FEA pursuant to the 2020 MRASA (totalling \$113,703,623.61) less the amounts it has received purportedly as payments from Veolia but which was in fact paid by FEA as part of the concealment of the Scheme (\$25,696,000.00) which leaves an outstanding loss of \$88,007,623.61

581. Aramia Holdings is liable to pay equitable compensation to SMBC L&F with respect to the losses occasioned by reason of the Scheme.