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Form 59  
Rule 29.02(1)

## Affidavit

No. N616/2021

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 Limited ACN 153 301 172** and others named in the Schedule  
Respondents

Affidavit of: Carly Rossbach-Smith

Address: 128-136 Great Eastern Hwy, South Guildford, Western Australia, 6055.

Occupation: Treasury Operations Manager I Finance

Date: 3 February 2022

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I, Carly Rossbach-Smith of 128-136 Great Eastern Hwy, South Guildford 6055, Western Australia, Treasury Operations Manager, say on affirmation:

- I am employed as the Treasury Operations Manager at WesTrac Pty Ltd ABN 63 009 342 572 (**WesTrac**) and have been in this role since 16 September 2019.

Filed on behalf of (name & role of party)	Westpac Banking Corporation and Westpac New Zealand Limited, applicants
Prepared by (name of person/lawyer)	Caitlin Murray
Law firm (if applicable)	MinterEllison
Tel (02) 9921 8888	Fax 02 9921 8123
Email	caitlin.murray@minterellison.com
<b>Address for service</b> (include state and postcode)	Governor Macquarie Tower, 1 Farrer Place, SYDNEY NSW 2000 Our reference: CMM:AGS:1353397

2. All references to time in this affidavit are references to Australian Eastern Standard Time.
3. Exhibited to me at the time of deposing this affidavit is a paginated bundle of documents marked Exhibit CRS-1 (**CRS-1**). Throughout this affidavit I make reference to documents which appear within CRS-1.
4. On or around 26 May 2021, I had a discussion with Nick O'Brien of Westpac Banking Corporation (**Westpac**) about possible financing for a \$50m leasing facility. Mr O'Brien and I had a conversation in words to the following effect:

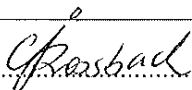
*Me: WesTrac are considering a new sale and lease back style arrangement with one of our customers for around A\$50m. I had wanted to check if we would have available limit with Westpac to accommodate this please?*

*Mr O'Brien: It would likely be possible. We would need to seek credit approval to extend the limit. I believe WesTrac currently have around A\$9.7m drawn of the available A\$12m limit.*

*Me: We do? What does that relate to please? I hadn't been aware we had anything drawn on the leasing side?*

5. On 26 May 2021 at 6.19pm, following my telephone call with Mr O'Brien, I sent an email to Mr Tim Ewing, referring to my call with Mr O'Brien and enquiring about the \$9.7m of exposure in relation to the leasing facility. Mr Ewing was my primary contact in Westpac's Structured and Asset Finance Team.
6. Mr Ewing and I then exchanged further emails which include the following emails which attached 'equipment financing packs' in relation to the leasing facility:
  - (a) an email chain ending with an email sent at 4.55pm on 2 June 2021;
  - (b) an email chain ending with an email sent at 4.59pm on 2 June 2021; and
  - (c) an email chain ending with an email sent at 9.21am on 3 June 2021.
7. A copy of the emails including their attachments to which I refer at paragraphs 5 and 6 above are at pages 1 to 156 of CRS-1. Those emails attached six different payment schedules with Forum Finance Pty Ltd for the purchase of equipment (**Payment Schedules**).
8. As part of my role, I have access to the books and records of WesTrac. I conducted internal enquiries within WesTrac (including inquiries within the books and records of

Signed: .....



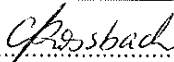
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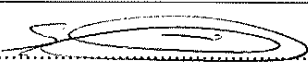
WesTrac) in relation to the Payment Schedules. My internal inquiries included the following.

- (a) On 2 June 2021, after my email correspondence with Mr Ewing, I raised the Payment Schedules with WesTrac's Reporting and Compliance Team by sending an email to the Group Financial Controller, Nick Bellamy, and Reporting and Compliance Manager, James Rayner. Nick Bellamy replied to my email that same day asking me to request all the agreements from Westpac. A copy of that email correspondence is at pages 157 to 160 of CRS-1.
- (b) On 2 June 2021, I had a conversation with Nick Bellamy and James Rayner in which one or both of them said words to the effect that, *"We cannot find a record of the equipment listed in these Schedules on the asset register"*.
- (c) On 2 and 3 June 2021, I spoke with the Information Systems (IS) team (when Westpac provided copies of the Payment Schedules, I initially thought they related to IS). The Payment Schedules were shared with Jimmy Leng, WesTrac's Group Manager – IS. After reviewing the Payment Schedules, Mr Leng sent me an email on 3 June 2021 to the effect that he did not know what the Payment Schedules related to and that WesTrac had closed out its contract with Forum Group and returned the leased printers to Forum. A copy of that email is at pages 161 to 171 of CRS-1.
- (d) Mr Leng suggested I speak to the Procurement Team or the Technology Team. I then spoke to the Procurement Team. I became aware that Craig Jackson, National Procurement Manager, spoke with James Mendham, Category Manager, from the Procurement Team, who has been with the business for ten years. On 3 June 2021, I discussed the Payment Schedules with Mr Mendham in a meeting via Microsoft Teams and Mr Mendham said words to the effect of *"I'm looking into the Payment Schedules."*
- (e) On 3 June 2021 at 12:25pm, I sent an email to Mr Ewing requesting further information from Westpac as to why this arrangement utilised WesTrac's credit facility. On 3 June 2021 at 5:24pm, Mr Ewing responded to the effect that the payment for the rental equipment is a WesTrac obligation and is therefore booked against WesTrac's limits. A copy of that email correspondence is at pages 172 to 181 of CRS-1.
- (f) From 3 to 10 June 2021, I became aware that Mr Mendham reached out to various teams within the business to see if they had a record of the assets listed

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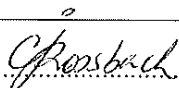
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on the Payment Schedules. This included the Facility Managers in both WA and NSW, staff in Port Hedland and several members of the Technology Team, given that the schedule of assets appeared as though they may be relevant to these teams. One schedule included numerous Surfaced Helios. "Helios® UV-C Disinfection System, The Surfaced Helios® System is the only patented, UV-C hard surface disinfection solution to use multiple light-emitting robots in a single cycle of disinfection, resulting in greater efficiency in less time." The Payment Schedules suggested that three of these assets were in Port Hedland, though Mr Mendham informed me that the members of the team there (I cannot now recall exactly who) confirmed they definitely were not. I became concerned about this discrepancy. Adding to this, there were numerous ZZOTA Site 7X GPS listed on the Payment Schedules, which are advanced in-vehicle touch screen technology, and Mr Mendham informed me that members of the Technology Team (I cannot now recall exactly who) confirmed that this was not something they were using or had ordered. Traniel Venagiam, WesTrac's Commercial Fleet & Contract Advisor also confirmed they did not relate to the WesTrac Fleet Program or Service Vehicles.

- (g) On the afternoon of 10 June 2021, Mr Mendham spoke to me about his discussions across the business about these assets and I suggested to him he speak to Kevin Buckley, WesTrac's General Manager Risk, Safety and Security. Mr Mendham and Mr Buckley took copies of the Payment Schedules to Jarvas Croome, WesTrac Chief Executive Officer. After the discussion, I saw Mr Mendham leave Mr Croome's office, and walk up to my desk, at which point Mr Mendham said to me "Jarvas didn't sign those forms." On further review, I observed that:
- (i) one Payment Schedule had Mr Croome's first name spelt incorrectly as "Jarvis"; and
  - (ii) some other signatories were either unknown as employees of WesTrac or had apparently signed subsequent to their departures from the business.
- (h) After Mr Mendham told me Jarvas had not signed the Payment Schedules, Roberto Maltese, Group Finance Manager, and I made enquiries as to whether a beneficiary under the name Forum Finance, BHO Funding Pty Limited or Eqwe Pty Limited was set up as a Vendor in SAP (WesTrac's enterprise resourcing planning software), so that we could ensure funds had not been debited WesTrac's accounts to an unknown beneficiary. We discovered they were not.

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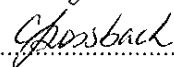
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WesTrac conducts daily reconciliations of its bank accounts so it would not have been possible to service the Payment Schedules without purchase requisitions and purchase orders being set. I also reviewed the listing of machine identification numbers referable to particular photocopiers and printers on invoices provided by Forum Group as against those recorded on the Payment Schedules. None of these identification numbers matched up. Mr Maltese and I became aware that Forum Group was set up as a vendor but payments to Forum Group were made via direct debit by this company. The last payment to Forum Group was on 3 May 2021. The direct debit authority which had been extended to Forum Group was also cancelled with Westpac.

- (i) I reviewed the bank statements to determine if payments had been made which matched the amounts on the Payment Schedules. There was a direct debit dated 1 February 2021 which the Accounts Receivable (AR) Team had recorded as an unidentified item for \$35,507.00. I queried this debit with Westpac in early March 2021 on the basis of the description: "PAYMENT BY AUTHORITY TO WBC Leasing 025-0866950-007" and Vivien Xie, Senior Associate, Lending Service Manager – Lending Product, Service & Transformation, Westpac Institutional Bank, responded to the effect that the charge had been made in error and would be refunded to WesTrac. A copy of that email is at pages 182 to 185 of CRS-1. The refund was received on 3 March 2021 and no other direct debits from Westpac Leasing were identified.
9. The conclusion I reached from my internal enquiries within WesTrac was that there was only one printer/photocopier arrangement that had been in place with Forum, in the amount of around \$1.6m. WesTrac had no record that any external financing arrangements were in place for this agreement with Westpac. The \$9.7m of drawn amount of the facility as advised to me by Mr O'Brien and Mr Ewing, as detailed above, could not be reconciled. A copy of the Standing Offer that WesTrac had in place with Forum is at pages 186 to 247 of CRS-1.
10. On 10 June 2021, I had a telephone call with Mr O'Brien in which I said words to the following effect:
- Me: *Nick, Jarvas said he didn't sign those schedules. We have no record on our side of these documents you have provided us as ever being shared directly with us. We did not know these amounts were being drawn in WesTrac's name.*

Signed: .....



Taken by: .....



11. On 11 June 2021, I received a telephone call from Mr O'Brien during which he said to me words to the following effect:

Mr O'Brien: *Westpac have reached out to Forum for further information on the schedules and arrangements they currently have in place with WesTrac. We have asked them to send through a summary of this information.*

12. On 14 June 2021 at 11.37am, I forwarded to Messrs O'Brien and Ewing an email chain which I had received from Jimmy Leng. This email chain included emails between Mr Leng and Justin McShane of Forum Group. A copy of this email chain is at pages 248 to 250 of CRS-1.
13. On 14 June 2021, I exchanged further emails with Mr O'Brien. A copy of these emails are at pages 251 to 255 of CRS-1
14. On or about 15 June 2021, I received a call from Mr Ewing informing me that Forum planned on reaching out to WesTrac to arrange a face to face meeting with their CEO, Bill Papas. Learning this, I immediately rang and spoke to Mr Leng to let him know that Forum would likely reach out to him on this, given he was their key contact. Mr Leng did speak to Forum and on 15 June 2021 I received a meeting invitation from Justin McShane from Forum for a meeting on 16 June 2021 at 3.30pm at the WesTrac Head Office in Perth. Myself, Mr Maltese and Mr Leng were invited. A copy of that email invitation is at page 256 of CRS-1. On 16 June 2021 at 3.56pm, I received an email from Mr McShane letting me know that there had been an emergency and Mr Papas would need to reschedule. A copy of that email is at page 257 of CRS-1. On 17 June 2021, I received a call from Mr Ewing in which Mr Ewing asked me how the meeting went, and I told Mr Ewing that the meeting had not gone ahead because Mr Papas was unable to attend.
15. On 17 June 2021, I exchanged text messages with Mr O'Brien regarding Forum repaying part of the WesTrac receivable on the \$12M facility. A copy of these text messages is at page 258 of CRS-1. On 18 June 2021, I exchanged emails with Mr O'Brien regarding whether further funds had been received back from Forum. A copy of these emails is at page 259 of CRS-1.
16. In the course of preparing this affidavit I have also been shown the following documents (at pages 260 to 269 of CRS-1):
- (a) a document titled 'Customer Payment Schedule' from Forum Finance dated 12 February 2021;

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*[Signature]*

- (b) a document titled 'Certificate of Delivery' dated 12 February 2021; and
  - (c) a letter from Forum Finance to WesTrac dated 18 February 2021.
17. With respect to the documents I refer to at paragraph 16 above, I have searched the books and records of WesTrac and have been unable to locate an original or a copy of those documents.

Sworn by the deponent  
 at South Guilford  
 in Western Australia  
 on 3 February 2022

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 )  
 )  
 )  
 ) Crossbach  
 Signature of deponent

Before me: Susannah Shelagh Haines

[Signature]  
 Signature of witness

Solicitor

Signed: Crossbach Taken by: [Signature]

**Schedule of Parties**

No. NSD616/2021

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

**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

Signed:  Taken by: 



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
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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## NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 4/02/2022 4:24:26 PM AEDT 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: 4/02/2022 4:30:42 PM AEDT

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.