

NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 2/07/2021 12:58:20 PM AEST and has been accepted for filing under the Court's Rules. Filing and hearing details follow and important additional information about these are set out below.

Filing and Hearing Details

Document Lodged:	Interlocutory Application - if seeking Freezing or Search Order - Form 35 - Rule 17.01(1)(a)
File Number:	NSD616/2021
File Title:	WESTPAC BANKING CORPORATION ABN 33 007 457 141 v FORUM FINANCE PTY LIMITED & ANOR
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	To Be Advised
Time and date for hearing:	To Be Advised
Place:	To Be Advised



A handwritten signature in blue ink that reads 'Sia Lagos'.

Dated: 7/07/2021 4:22:11 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 Reason for Listing shown above is descriptive and does not limit the issues that might be dealt with, or the orders that might be made, at the hearing.

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.

Heard on Friday 2 July 2021

Form 35
Rule 17.01(1)



Interlocutory application

No. NSD616/2021

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

Westpac Banking Corporation ABN 33 007 457 141
Applicant

Forum Finance Pty Limited ACN 153 301 172 and others names in the schedule
Respondents

To Vincenzo Frank Tesoriero

The Applicant applies for the interlocutory orders set out in this application.

The Court will hear this application, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, then the Court may make orders in your absence.

Time and date for hearing:

Place:

Filed on behalf of (name & role of party) Westpac Banking Corporation, Applicant
Prepared by (name of person/lawyer) Caitlin Murray
Law firm (if applicable) MinterEllison
Tel (02) 9921 4279 Fax (02) 9921 8123
Email caitlin.murray@minterellison.com
Address for service Level 40, Governor Macquarie Tower, 1 Farrer Place, Sydney NSW 2000
(include state and postcode) Our reference: 1353397

[Form approved 01/08/2011]



The Court ordered that the time for serving this application be abridged to

Date: 2 July 2021

.....
Signed by an officer acting with the authority
of the District Registrar



Interlocutory orders sought

General Orders

1. An order that the Applicant be granted leave to file:
 - (a) this Interlocutory Application dated 2 July 2021;
 - (b) affidavit of Caitlin Maria Murray sworn on 2 July 2021; and
 - (c) affidavit of Nicholas Antony O'Brien sworn on 1 July 2021.
2. An order that paragraphs 1 to 8, of this Interlocutory application be returnable *instanter*.
3. An order pursuant to rule 1.39 of the *Federal Court Rules 2011* (Cth) (**FCR**) abridging the time for service of the interlocutory application and the supporting affidavits 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 by 5pm on 2 July 2021; and
 - (b) by delivering to 23 Margaret Street, Rozelle NSW 2039 by 6pm on 2 July 2021.
4. This interlocutory application be listed for further hearing at on July 2021.
5. Vincenzo Frank Tesoriero be joined as the third respondent.

Freezing Orders

6. A freezing order against Vincenzo Frank Tesoriero pursuant to section 23 of the *Federal Court of Australia Act 1976* (Cth) and rule 7.35 of the FCR, in the form of the orders attached as **Annexure A** to this interlocutory application.

General orders

7. Leave to enter these orders forthwith.
8. Such further or other orders as the Court deems fit or necessary.
9. Costs.



Service on the Respondents

It is not intended to serve this application on the Respondents until after determination of the ex parte application.

Date: 2 July 2021

A handwritten signature in blue ink, appearing to read "Caitlin Murray".

Signed by Caitlin Murray
Lawyer for the Applicant

**Schedule of Parties**

No. NSD616/2021

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

Applicants

Applicant **Westpac Banking Corporation ABN 33 007 457 141**

Respondents

First Respondent **Forum Finance Pty Limited ACN 153 301 172**

Second Respondent: **Basile Papadimitriou**

Third Respondent: **Vincenzo Frank Tesoriero**



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 e-mail to the email address r.panetta@panetta.com.au by 5pm on 2 July 2021;
 - (ii) by delivering to 23 Margaret Street, Rozelle NSW 2039 by 6pm on 2 July 2021.
- (2) Subject to the next paragraph, this order has effect up to and including 5pm on ____ 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 _____.
- (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 AUD254,500,000.
- (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:
 - (1) 23 Margaret Street Pty Limited ACN 623 715 373;
 - (2) 1160 Glen Huntly Road Pty Limited ACN 639 447 984;
 - (3) 14 Kirwin Road Morwell Pty Limited ACN 641 402 093;



- (4) 64-66 Berkeley St Hawthorn Pty Limited ACN 643 ★
838 662;
- (5) 14 James Street Pty Limited ACN 638 449 206;
- (6) Canner Investments Pty Limited ACN 624 176 049;
- (7) Tesoriero Investment Group Pty Limited ACN 161 088
115;
- (8) 123 High Street Taradale Pty Limited ACN 639 872
512;
- (9) 160 Murray Valley Hwy Lake Boga Pty Limited ACN
641 392 921;
- (10) 31 Ellerman Street Dimboola Pty Limited ACN 641
392 887;
- (11) 4 Cowslip Street Violet Town Pty Limited ACN 639
872 352;
- (12) 55 Nolan Street Maryborough Pty Limited ACN 641
392 912;
- (13) 89 Betka Road Mallacoota Pty Limited ACN 641 393
179;
- (14) 9 Gregory Street Ouyen Pty Limited ACN 641 392
707;
- (15) 9 Main Street Derrinallum Pty Limited ACN 639 872
736;
- (16) Forum Group Financial Services Pty Limited ACN 623
033 705;
- (17) 26 Edmonstone Road Pty Limited ACN 622 944 129;
- (18) 5 Bulkara Street Pty Limited ACN 630 982 160; and
- (19) 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 the further hearing on the Return Date (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) within six (6) working days after being served with this order, 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 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 the 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	Date affidavit made
(1) Caitlin Maria Murray	2 July 2021
(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

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

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