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Details of Filing

Document Lodged: Affidavit - Form 59 - Rule 29.02(1)
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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



Sia Lagos

Dated: 28/06/2021 11:12:01 AM AEST

Registrar

Important Information

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Form 59
Rule 29.02(1)

Affidavit

No. NSD of 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 another
Respondents

Affidavit of: **Nicholas Antony O'Brien**
Address: Level 30, 275 Kent Street, Sydney NSW 2000
Occupation: Managing Director, Head of Consumer & Industrials
Date: 27 June 2021

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Filed on behalf of (name & role of party) Westpac Banking Corporation, Applicant
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[Version 3 form approved 02/05/2019]

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Nicholas Antony O'Brien

Caitlin Murray

I, Nicholas Antony O'Brien, Managing Director, say on oath:

Introduction

1. I am employed by Westpac Banking Corporation (**Westpac**) in the position of Managing Director (Head of Consumer and Industrial), Westpac Institutional Bank. I am authorised to make this affidavit on Westpac's behalf.
2. Except where otherwise indicated, I make this affidavit from my own knowledge. Where I set out information based on information and belief, I believe that information to be true based on my enquiries of the relevant people.
3. Shown to me at the time of swearing this affidavit is an exhibit marked '**NOB-1**' (**Exhibit NOB-1**). In this affidavit I make reference to material within Exhibit NOB-1. Where I refer to a page number, it is a page number within Exhibit NOB-1.

Background

4. I have been employed by Westpac since 1989. In that time, I have held various roles, including as the Executive Director, Head of Consumer & Industrials as my prior role. In about April 2021, I was appointed to my current role of Managing Director, Consumer & Industrials.
5. In my current role, I am responsible for managing a team of relationship managers and analysts who service customers in the Consumer & Industrials industry sector. One part of my role is to act as the relationship manager for three large institutional customers of Westpac that operate in the Consumer & Industrial sector. One of those customers is Seven Group Holdings Limited (**Seven Group Holdings**), which includes its subsidiary company, WesTrac Pty Limited (**WesTrac**).
6. In my role as WesTrac relationship manager, I have become familiar with the nature of WesTrac's business and its operations as well as the facilities that it has with Westpac. WesTrac is one the largest authorised Caterpillar (also known in the industrial sector as 'Cat') equipment dealers in the world. WesTrac sells various machinery and construction equipment to its clients in Western Australia and New South Wales.



A call with WesTrac

7. In late May 2021, I was informed by Ms Carly Rossbach-Smith, who I knew to be the Treasury Operations Manager (Finance) for WesTrac based in their Perth office, that it was considering a large contract, for which it may require finance. In this context I had discussions with Ms Rossbach-Smith. The project being considered by WesTrac does not, to my knowledge and understanding have any connection with or link to Forum Finance Pty Ltd (**Forum Finance**) or Eqwe Pty Ltd (**Eqwe**) (who I know has also been known as BHO Finance). I understand that the details of this project are commercially sensitive and confidential to WesTrac and I am not authorised to disclose that information.
8. In the context of this project, I had discussions with Ms Rossbach-Smith in connection with certain facilities that were held by WesTrac with Westpac. To have those conversations, I accessed Westpac's records as to the facilities which WesTrac had, including both facility limits and the amount of headroom available.
9. On or around 26 May 2021, I had a telephone conversation with Ms Rossbach-Smith. This conversation was in relation to the large contract and included words to the following effect:

Ms Rossbach-Smith: *I would like to discuss a \$50 million leasing facility*

Would there be any issues in light of other activity across the group.

Me: *Let's review the limit availability at the moment across the group, but just give me a minute to retrieve the exposure data.*

I can see that there is [I said an amount] of headroom under our financial markets facilities plus some availability under ancillary facilities and leasing lines, which should be able to make up the difference.

Looking at the main leasing line, there now appears to be about \$2.5m of headroom under the \$12 million facility with \$9.7m drawn. There was a separate \$2m undrawn leasing facility.

Nick O'B

SR

Ms Rossbach-Smith: *That drawn level seems high. Let me check that and I'll come back to you.*

Discovery of a concern about the WesTrac leasing line facility

10. I did not hear back from Ms Rossbach-Smith that week. However, I have been informed by Mr Tim Ewing, who is a Director in Westpac's Asset Finance department, and believe that he and Ms Rossbach-Smith exchanged emails in relation to this facility from 26 May 2021 until 3 June 2021.
11. Mr Ewing has provided me with a copy of email he exchanged with Ms Rossbach-Smith between 26 May and 3 June 2021. In these email exchanges, Ms Rossbach-Smith asked for information in relation to the drawdown on the \$12 million facility and Mr Ewing provided copies of the equipment financing documents relevant to the funding that had been drawn down under the facility. These emails include:
- (a) an email chain ending with an email sent at 4:55pm (AEST) on 2 June 2021 that attached four of the equipment financing "packs", a copy of this email and its attachments is at pages [1] to [49] of Exhibit NOB-1;
 - (b) an email chain ending with an email sent at 4:59pm (AEST) on 2 June 2021 that attached the fifth equipment financing "pack", a copy of this email and its attachments is at pages [50] to [116] of Exhibit NOB-1;
 - (c) an email chain ending with an email sent at 9:21am (AEST) on 3 June 2021, that attached a further equipment financing pack, a copy of this email and its attachments is at pages [117] to [146] of Exhibit NOB-1; and
 - (d) an email chain ending with an email sent at 5:23pm (AEST) on 3 June 2021, at pages [147] to [155] of Exhibit NOB-1. In this email Mr Ewing wrote:

My understanding on this is that the equipment is supplied by Forum to Westrac but that EQWE act as the middle man in terms of managing / servicing the equipment on an ongoing basis and arranging the finance. Since the payment of the rentals is a Westrac obligation the finance provided by Westpac (on a fully disclosed basis to the customer) is booked against Westrac limits as it is effectively Westrac risk.
12. On 10 June 2021 in the evening between approximately 7.00pm to 8.00pm (AEST), I spoke with Ms Rossbach-Smith. I remember this call clearly since the news she delivered was very concerning.

13. During this call, Ms Rossbach-Smith said words to me to the following effect:

Ms Rossbach-Smith: *I've done some internal checking on those numbers you mentioned. My internal checks suggest that there should only be one printer/photocopier arrangement for around \$1.6 million in the leasing line. We have looked and we can't reconcile the \$9.7 million balance that you have mentioned in the lease finance facility. I've also checked the paperwork that was sent to me by the Asset Finance team. I've looked at that and I think those contracts have been forged. I have checked with Jarvis Croome, who is the person referred to on the contract and he has no recollection of signing the paperwork provided by Westpac.*

14. A copy of a call report of this call is at pages [156] to [159B] of Exhibit NOB-1. Westpac's practice is to require call reports of significant call to be created and logged to a customer file. I created this call report on 24 June 2021. I did not create it contemporaneously with the call as I immediately commenced urgent inquiries to be made due to the information Ms Rossbach-Smith provided to me during this call.
15. I recall that very shortly after my discussion with Ms Rossbach-Smith, on 10 June 2021, I telephoned Mr Ewing and left two voice messages for him over the course of the evening to call me. When I could not get in touch with Mr Ewing, I telephoned Mr Ewing's supervisor, Peter Deutsch, Head of Asset and Trade and left a voice mail message for him to call me at approximately 8.36pm (AEST).
16. Later during the evening of 10 June 2021, Mr Ewing returned my call. During this call I reported to him my conversation with Ms Rossbach-Smith. I said to Mr Ewing that his team should undertake an immediate investigation into the circumstances which had given rise to Ms Rossbach-Smith's concerns. Mr Ewing and I agreed that Mr Ewing would need to have an urgent meeting with Eqwe and Forum Finance about the circumstances. At this time, I left the matter with Mr Ewing to attend to and we agreed to meet the next morning in the office.
17. On Friday 11 June 2021, I met with Mr Ewing in the office at around 9.45am (AEST). During this meeting, Mr Ewing provided me with a high level explanation of how he thought the transaction flow worked between Eqwe/Forum/Westpac and WesTrac. During this meeting Mr Ewing also said to me words to the effect "Geoff is meeting with the BHO/Forum representatives as we speak to get their position clear". I understood

the reference to Geoff to be a reference to Geoff Anderson who is also a Director in the Asset Finance team and the reference to BHO to be a reference to a reference to Eqwe.

Communications with Eqwe and Forum Finance

18. On 14 June 2021 at approximately 11.37am (AEST), Mr Ewing and I were forwarded an email chain from Ms Rossbach-Smith, which email chain included:

(a) An email sent by Justin McShane (of Forum Group) to Jimmy Leng (of WesTrac) on 11 June 2021 at approximately 2.15pm (AEST) that said among other things:

Forum Group use Westpac Bank as the ultimate underwriter for the agreements within Westrac.

The agreement covers all the Multifunction devices, printers and solution that are provided to Westrac

(b) an email from Mr Leng to Mr McShane sent on 14 June 2021 which referred to an agreement and variations in place with Forum Group and requested information and documentation from Mr Leng; and

(c) an email from Mr McShane to Jimmy Leng on 14 June 2021 that said he would request the additional information.

A copy of that email chain is at pages [160] to [162] of Exhibit NOB-1.

19. On 14 June 2021, Ms Rossbach-Smith and I exchanged further emails in relation to the communications with Forum Finance. A copy of these email chains is at pages [163] to [167] of Exhibit NOB-1.

Repayment of funds on WesTrac facilities

20. I have been informed by Mr Anderson and believe that on 11 June 2021 he had a meeting with Mr Luke Price, the director of Eqwe in relation to the WesTrac equipment financing agreements through Eqwe and Forum Finance. I have been informed by Mr Anderson and believe that he also on 11 June 2021 had a call with Bill Papas in relation to the WesTrac financing agreements. I recall that I was informed by Mr Anderson and believe that during this call, (or over the weekend or on the following Monday, I cannot now recall precisely), Mr Papas said that Forum Finance would repay the exposure on the WesTrac facility.

21. On the night of 11 June 2021, I called Ms Rossbach-Smith to provide her with an update on the situation, noting the call we had with Forum/BHO earlier that day. I also contacted Richard Richards, the Chief Financial Officer of Seven Group Holdings to advise him of the situation.
22. I am aware from my discussions with Mr Anderson that Westpac on 15 June 2021 issued a demand to Forum Finance to repurchase the WesTrac receivables, which demand was in the amount of \$9,624,791.26.
23. On 17 June 2021, I sent a text message to Ms Rossbach-Smith in which I said "*Westpac has \$4.4m back so far*". Ms Rossbach-Smith replied and said "*Thanks Nick. \$5.3M to go.*" These text messages were in relation to Forum Finance repaying part of the WesTrac receivable. A screenshot of these text messages is at page [168] of Exhibit NOB-1. I had been informed that Westpac had received the amount of \$4.4 million from Forum Group.
24. On 18 June 2021, I received an email from Ms Rossbach-Smith in which she asked me whether Westpac had received any more money from Forum, to which I replied with words to the effect that Westpac had not. A copy of this email is at pages [169] of Exhibit NOB-1.
25. On or about 24 June 2021, I exchanged further text messages with Ms Rossbach-Smith about receipt of funds from Forum Finance. A screenshot of these text messages is at page [170] of Exhibit NOB-1.
26. To the best of my knowledge, Forum Finance has not yet repaid the remaining amount of \$5.3 million in relation to the WesTrac receivable which was the subject of Westpac's repurchase demand made on 15 June 2021.

WesTrac proposed meeting with Mr Papas

27. On or about 18 June 2021 I had a conversation with Ms Rossbach-Smith during which she said to me words to the following effect.

Ms Rossbach-Smith: *A meeting had been scheduled between WesTrac and Forum to review the situation, but Bill Papas never turned up to the meeting at WesTrac. 30 minutes after the meeting was due to commence a representative of Forum advised that Mr Papas had suffered some type of medical situation and would be unable to attend the meeting.*

Meeting with the WesTrac Chief Financial Officer

28. On 24 June 2021, I had a conversation with Mr Mike Carey, who I know to be the recently appointed Chief Financial Officer of WesTrac. During the course of that telephone conversation, I recall words to the following effect were spoken:

Mr Carey: *Having completed their full analysis, there was one valid agreement WesTrac has with Forum for the printer/photocopy equipment, circa \$1.6 million in original value, but it ran off earlier this year. All other contracts presented to us from Westpac are fraudulent. We have drafted letters to Forum and Westpac which we are planning to send tomorrow which would basically state that we felt the contracts were fraudulent and WesTrac had no liability.*

Me: *Westpac's preference is that there would be no correspondence sent to Forum at this juncture.*

Mr Carey: *We will hold off on sending anything to Forum until next week or pending a further update from you. WesTrac will do what they can to assist Westpac in this matter.*

Me: *WesTrac is not the only customer potentially impacted. I will give you an update tomorrow afternoon.*

29. Following my discussion with Mr Carey, on 24 June 2021 at 5:32pm (AEST), I completed an internal call report to record the substance of the conversation I had with Mr Carey. A copy of this call report is at pages [171] of Exhibit NOB-1.
30. On 25 June 2021 at approximately 12:00pm (AEST), I received a letter by email from Mr Carey of WesTrac setting out, in effect, the basis on which WesTrac had concluded that the documents Westpac had sent from its records to WesTrac were fraudulent. A copy of this letter is at pages [172] to [173] of Exhibit NOB-1.

ME O'B

SEP

Assistance with Westpac investigation in relation to other affected customers

31. I am informed by Mr Anderson and verily believe that after the significant issues in relation to the WesTrac leasing facility were discovered, Westpac commenced an investigation into whether any other customers in the Eqwe / Forum Finance program may be affected by similar concerns.
32. I have assisted with those inquiries and investigations in relation to other Westpac customers, to which I refer below.

HWL Ebsworth Lawyers

33. On 25 June 2021 at approximately 2.40pm (AEST), I had a telephone conversation with Mr Kris Hopkins, the Chief Operating Officer of HWL Ebsworth Lawyers (**HWL**), which is a customer within Consumer & Industrials Victoria which has as part of its overall facilities an asset finance facility in relation to Forum Finance. During that telephone call, Mr Hopkins and I had a conversation using words to the following effect:

Me: *Westpac sent an email to HWL on June 23 seeking a review of documentation in regard to contracts/payment arrangements with Forum; we have reason to believe that there is the possibility of some/all of these contracts being fraudulent. Other customers have also been impacted.*

Mr Hopkins: *Based on email sent to HWL on Wednesday from Westpac which contained existing leasing docs including payment schedules, I have requested his Head of IT to urgently review*

Me: *We would be grateful if this review could be done promptly and we would request that there is now direct communication from HWL with Forum.*

Mr Hopkins: *The potential of this happening with HWL would be a big shock - HWL have a greater than 20 year relationship with Forum. HWL have done legal work for Forum, but I am not sure if there is any legal work underway at present. They are also paying Forum circa \$80,000-\$90,000 a month directly for services.*

34. Following my discussion with Mr Hopkins, on 25 June 2021 at approximately 2.49pm (AEST), my colleague (Andrew Lourie) completed an internal call report to record the substance of the conversation I had with Mr Hopkins. A copy of this call report is at pages [174] to [175] of Exhibit NOB-1.

Scentre Shopping Centre Management Pty Ltd

35. On 25 June 2021 at approximately 3.30pm (AEST), I participated in the Microsoft Teams meeting with a representative of Scentre Shopping Centre Management Pty Ltd (**Scentre**), who I understand is a large Westpac Property, Infrastructure, Energy and Resources customer for whom as part of the relationship we have recorded leasing exposure (which covers transactions relating to Forum Finance). Michael Davidson, who is a Director in Westpac's Property, Infrastructure, Energy and Resources team (and the relationship manager for Scentre), and Scentre Group Treasurer, Richard Williams attended the Teams meeting during which we had a conversation using words to the following effect:

Mr Davidson: *Nick I'd like you to meet Richard Williams of Scentre.*

Me: *I am a Managing Director in CIB and I have been involved in Westpac's investigations in relation to Forum. I note that Geoff Anderson of Westpac has sent an email and attachments to Jeremy Martin (of Scentre) on Wednesday June 23, and I understand this was subsequently provided to you directly.*

Mr Williams *I have received the email and attachments earlier today, and I have already commenced internal investigations in relation to this matter with other departments within Scentre. I will come back to you or Michael Davidson once we have completed investigations.*

36. Following my discussion with Mr Williams and Mr Davidson, on 25 June 2021 at approximately 3.31pm (AEST), Mr Davidson completed an internal call report to record the substance of the conversation I had with Mr Williams and Mr Davidson. A copy of this call report is at pages [176] to [177] of Exhibit NOB-1.

Coles Supermarkets Australia Pty Limited

37. On 25 June 2021 at approximately 1.00pm (AEST), I had a Microsoft Teams meeting with Coles Supermarkets Australia Pty Limited (**Coles**), which is a large Westpac Consumer & Industrials customer for whom as part of the relationship we have recorded leasing exposure (which covers transactions relating to Forum Finance). David Chapman, an Executive Director of Westpac, and the relationship manager in relation to Coles, and Shane Healey, the Group Treasurer of Coles, and we had a conversation using words to the following effect:

Mr Healy: *I note that Westpac sent Coles an email regarding Forum on Wednesday. I have heard from my management team following this email, who forwarded it on to me.*

Me: *I can confirm that we are concerned that there is the possibility of fraudulent activity in regard to \$5.3 million of exposure drawn out of the \$7 million limit marked up for Coles. Please could you refrain from speaking with Forum and complete your internal analysis of the validity of the contracts as soon as possible. This matter has the highest level of management focus within Westpac and it is considering its legal position given developments.*

Mr Healy: *I will escalate at Coles and communicate with my internal legal team to brief them and come back to you to arrange a further call.*

38. On 25 June 2021 at approximately 2.00pm (AEST), I am informed by Mr Chapman, and believe that Mr Healey of Coles called him during which he advised that there was definitely an issue with this matter as it is not Vinay (of Coles) signature on the contracts. A copy of a call report prepared by Mr Chapman in relation to his call with Mr Healey is at pages [178] to [179] of Exhibit NOB-1.

Australian Leisure and Hospitality Group Pty Ltd

39. On 25 June 2021 at approximately 5:30pm (AEST)], I, Suzy Collier (Executive Director, Consumer NSW), and Stuart Akhurst (Director, Consumer NSW) had a video conference with Tricia Ho Hudson (Treasurer) of Woolworths Holdings, which is the owner of Australian Leisure and Hospitality Group Pty Ltd (**ALH**), which is a large Westpac Consumer & Industrials customer for whom as part of the relationship we have recorded leasing exposure (which covers transactions relating to Forum Finance) during which I was advised by Ms Hudson that ALH had limited knowledge of the issue, but ALH would accelerate its review of the documentation provided by Westpac. A copy of a call report prepared by my colleague Mr Akhurst in relation to this meeting is at pages [180] to [183] of Exhibit NOB-1.
40. On 26 June 2021 I had a conversation with Tricia Ho Hudson (Treasurer, Woolworths) and Shane Gannon (the Chief Financial Officer of Endeavour Group, which I understand to be demerging from Woolworths on 28 June 2021). During this conversation Ms Ho Hudson said to me words to the effect:

Ms Ho Hudson: *Our preliminary analysis suggests that the contracts that Westpac sent are likely to be fraudulent, but we need to do further internal reviews in regard to payment flows.*

Mr Gannon: *They would accelerate their review and revert as quickly as possible to me.*

41. A copy of a call report prepared by me in relation to his call with Ms Ho Hudson is at pages [184] to [185] of Exhibit NOB-1.
42. On 26 June 2021, Mr Gannon forwarded me an internal email chain which set out ALH's internal inquiries in relation to the Forum Finance equipment contracts. The email chain included an email from Mr Trevor Smith to Mr Gannon which said:

Bruce & Shane This is the second email I received and what is of concern is I have never seen these documents before and It is not my signature on them.... As stated today we do not lease the machines we only pay per KG of food waste that we place into the machines to digest. There has never been any install cost either.

And a further email from Mr Smith to Mr Gannon which said:

I have never sighted or seen the attached documents prior to the email I received from Geoff Anderson on the 23rd June 2021, the signature is definitely not mine and the title on the documents is not mine

A copy of this email chain and the attachments is at pages [186] to [224] of Exhibit NOB-1.

Veolia Environmental Services (Australia) Pty Ltd

43. On 25 June 2021 at approximately 1.30pm (AEST), I had a Microsoft Teams meeting with Tony Roderick, Chief Financial Officer (**CFO**), Preet Brar, the previous CFO, Arthur LeGrand, the Head of Compliance and Jane Sandilands, Head of Legal, of Veolia, along with my colleagues at Westpac: Peter Deutsch, Al Welsh, Geoff Anderson and Natalie Dundovic. Veolia is a large Westpac Consumer & Industrials customer for whom a material part of the relationship is recorded as leasing exposure (the majority of those transactions relate to Forum Finance). We had a conversation using words to the following effect:

Ms Brar: *I understand there is suggested maximum \$12 million of contracts with Forum which are legitimate; however, these contracts may not be under*

the Westpac receivable figure; and we will send us those contracts for review.

Mr Roderick: *I met with Bill Papas of Forum on two occasions earlier this year. I told him I was not satisfied with some of the terms of our contractual arrangements with Forum and the sale of the Orca product had become less profitable so they were not ordering more in FY 21. We have around 235 Orca units in circulation. We received a letter from a Canadian law firm around 3 weeks ago suggesting that Forum no longer had the licence to supply Orca equipment (and in fact it ran out in March 2020).*

A copy of a call report prepared by Ms Dundovic is at pages [225] to [227] of Exhibit NOB-1.

Catholic Healthcare

44. On 25 June 2021 at approximately 2:49pm (AEST), I received an email from Stacy Flanagan, Financial Controller at Catholic Healthcare Limited (which I understand is a customer in our Financial Institutions, Health, and Public Sector team and who has an asset finance facility in relation to Forum Finance) in which I was advised that they could not meet with Westpac until Monday at 12.30pm because they had not completed their internal investigations. A copy of this email is at pages [228] to [232] of Exhibit NOB-1.

Westpac New Zealand investigation in relation to Forum Finance

45. On 27 June 2021 at 1.35pm (AEST), I received an email from Mark John, the Head of Credit Restructuring (Acting), Credit Risk of Westpac, in which he informed me in respect of investigations in relation to the exposure of Westpac New Zealand Limited (**Westpac New Zealand**), which is a related entity of Westpac, in connection with Veolia Environmental Services (NZ) Pty Ltd, which I understand to be an end customer of Westpac New Zealand, and which is related to Veolia (to which I refer above). A copy of this email and its attachment is at pages [233] to [239] of Exhibit NOB-1.
46. I note that whilst investigations are ongoing in respect of Westpac New Zealand, based on information available to me from the records of Westpac, to the best of my knowledge I understand that the total exposure of Westpac New Zealand in respect of Forum Finance is approximately NZ\$42.8 million.
47. Based on the New Zealand and Australian dollar foreign exchange rates at the time of making this affidavit, being NZ\$1 equals A\$0.93, so that NZ\$42.8 million equals A\$39.8 million, I understand that Westpac and Westpac New Zealand's total exposure in relation

to Forum Finance is approximately A\$294.3 million (being the sum of A\$254.5 million in respect of Westpac and A\$39.8 million in respect of Westpac New Zealand).

Sworn by the deponent
at Sydney
in New South Wales
on 27 June 2021
Before me:

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Signature of deponent



Signature of witness

Simon Henry Brandis

Solicitor

And as a witness, I certify the following matters concerning the person who made this affidavit (**deponent**):

1. This affidavit is witnessed over audio visual link in accordance with Part 2B of the *Electronic Transactions Act 2000* (NSW).
2. I saw the face of the deponent.
3. I observed the deponent signing a copy of this affidavit in real time.
4. I attest or otherwise confirm witnessing the deponent's signature by signing this affidavit.
5. I am reasonably satisfied this affidavit signed by me is a copy of the affidavit signed by the deponent.
6. I have confirmed the deponent's identity using the following identification document:

Driver License

Identification document relied on (may be original or certified copy)

Signature of witness:



Schedule of Parties

No. NSD of 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**