

NOTICE OF FILING

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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 v FORUM
FINANCE PTY LIMITED & ANOR
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF
AUSTRALIA



Sia Lagos

Dated: 28/06/2021 11:12:08 AM 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.

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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: Caitlin Maria Murray

Address: Level 40, Governor Macquarie Tower, One Farrer Place, Sydney NSW 2000

Occupation: Solicitor

Date: 28 June 2021

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1.	Affidavit of Caitlin Maria Murray in support of application for Freezing Orders and Search Orders sworn on 27 June 2021	1	2
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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 8888 Fax 02 9921 8123

Email caitlin.murray@minterellison.com

Address for service Governor Macquarie Tower, 1 Farrer Place, SYDNEY NSW 2000

(include state and postcode) Our reference: CMM:AGS:1353397

Version 3 form approved 02/05/2019

I, Caitlin Maria Murray of Level 40, Governor Macquarie Tower, One Farrer Place, Sydney NSW 2000, Solicitor, say on oath:

1. I am a partner of the firm of solicitors, MinterEllison and the solicitor for the plaintiff (**Westpac**) and make this affidavit in support of Westpac's interlocutory application dated 27 June 2021 (**Westpac's Application**).
2. Exhibited to this affidavit is a paginated folder of documents marked exhibit 'CMM-1' (**CMM-1**) containing documents to which I refer throughout this Affidavit.
3. I have read the affidavit of Geoffrey Keith Anderson sworn on 27 June 2021 (**Anderson Affidavit**) and its accompanying exhibit GKA-1 (**GKA-1**) and make reference to material within the Anderson Affidavit and GKA-1 in parts of this affidavit.
4. I have also read the affidavit of Nicholas O'Brien sworn on 27 June 2021 (**O'Brien Affidavit**) and its accompanying exhibit NOB-1. I make reference to material within the O'Brien Affidavit and NOB-1 in parts of this affidavit.

Searches of the records of the Australian Securities and Investments Commission (ASIC)

5. I caused searches to be conducted of the records held by ASIC in respect of the entities referred to in sub-paragraphs (a) to (h) below. Copies of the extracts obtained at that time are at pages 1 to 15 of CMM-1:
 - (a) Forum Finance Pty Limited (ACN 153 301 172) (**Forum Finance**);
 - (b) Eqwe Pty Ltd (ACN 630 535 554) (**EQWE**);
 - (c) BHD Leasing Pty Limited (ACN 154 478 707) (BHD Leasing);
 - (d) 23 Margaret Street Pty Ltd (ACN 623 715 373).

Searches of the Personal Properties and Securities Register (PPSR)

6. I have also caused searches of the PPSR to be undertaken in relation to the following persons / entities:
 - (a) Forum Finance;
 - (b) Basile Papadimitriou; and
 - (c) EQWE,
 (together, the **PPSR Searches**).

Signed:



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Taken by:



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7. A company of the 'ESIS Search' summaries returned in relation the PPSR Searches is at pages 16 to 29 of CMM-1.

Real Property Searches

Australia wide real property searches 25 June 2021

8. I am informed by Kate Cockburn, a solicitor in my employ, and believe, that on 26 June 2021 she conducted owner name enquiries of the following persons / entities:

- (a) Basile Papadimitriou;
- (b) Bill Papadimitriou;
- (c) Basile Papas; and
- (d) Bill Papas,



of the official real property registers in the following jurisdictions:

- (e) Australian Capital Territory (**ACT**);
- (f) New South Wales;
- (g) Northern Territory (**NT**);
- (h) Queensland;
- (i) South Australia
- (j) Tasmania;
- (k) Victoria; and
- (l) Western Australia,

(the **Papadimitriou Australia Wide Real Property Searches**).

9. I am informed by Ms Cockburn and believe that:

- (a) the searches she conducted of the relevant real property registers held by the ACT and NT were not immediately returned; and
- (b) based upon her review of the results of the remainder of the Papadimitriou Australia Wide Property Searches, Mr Papadimitriou does not appear to personally be the owner of any real property in any other Australian jurisdiction.



Signed:  Taken by: 

Margaret Street Property Searches

- 10. The Forum Finance ASIC extract records Mr Papadimitriou's address as '23 Margaret Street Rozelle, NSW, 2039' (**Margaret Street Address**). On 26 June 2021, I caused a google search and a search of the Land and Title NSW registry to be conducted in respect of that property. A copy of the following documents are at pages 30 to 43 of CMM-1:
 - (a) a street address search in relation to 'Rozelle, Margaret, 23' obtained from domain.com.au; and
 - (b) a title search from the records of NSWLRS in relation to title reference 106/1021924 (**Margaret Street Title Search**),
 (together, the **Margaret Street Property Searches**).
- 11. The Margaret Street Title Search lists the registered proprietor of Margaret Street as 23 Margaret Street Pty Ltd, being a company owned by the other director of Forum Finance, Mr Vincenzo Tesoriero.

Conversations with NAB

- 12. I am informed by Ethan Beard, a Team Manager in Westpac's Financial Crime and Fraud Prevention Division, and verily believe, that he had a conversation a representative of NAB on 22 June 2021, at which time, Mr Beard reported to NAB a suspected fraudulent transfer of funds into an account held by Forum Finance, being account BSB – 082080 Account Number – 848483695 in an amount of \$2,750,277.00 on 2 June 2021. At this time, Mr Beard was advised by NAB that the account was "stopped" and that they would question their customer in relation to the transaction. Mr Beard indicated that he would be in touch when he knew more details around other transactions. NAB confirmed there was no recovery for that transaction.
- 13. I am informed by Vince Damiano, Senior Manager, Complex Investigations, Financial Crime & Fraud Protection, Westpac and verily believe that he spoke to NAB's Fraud Department at 5pm on 25 June 2021. Mr Damiano informed me that NAB had told him that account number 082080 848483695 was in the name of Forum Finance Pty Limited, that NAB had a long-standing customer relationship with Forum Finance, had not placed a hold on that account and would need an email with particulars of the fraudulent transactions to place a hold on the account. No email to that effect has yet been sent.

Signed:  Taken by: 

Search Orders

14. I have read paragraph 2.8 of the Federal Court's Search Order Practice Note (GPN-SRCH) (**Search Order Practice Note**).



Addresses

15. The application by Westpac seeks search orders in respect of five different premises, being:

- (a) the premises understood to be the residential premises of the second respondent, located at 23 Margaret Street, Rozelle (**Residential Premises**). I set out below the basis of my belief that this is the residential premises of the second respondent; and
- (b) the following business premises of the first respondent:
 - (i) the Sydney office located at Level 5, 141 Walker St North Sydney NSW 2060, which is a business address (**Sydney Premises**);
 - (ii) the Melbourne office located at Building 1, Level 5, 658 Church St, Richmond VIC 3121, which is a business address (**Melbourne Premises**);
 - (iii) the Perth office located at Level 8, 182 St Georges Terrace, Perth WA 6000 (**Perth Premises**); and
 - (iv) the Brisbane office located at 26 Edmondstone Road, Bowen Hills QLD 4006 (**Brisbane Premises**).

16. The ASIC search for Forum Finance (pages 1-4 CMM-1) lists the current principal place of business for Forum Finance as the Sydney Premises. The ASIC Search also reveals that the ultimate holding company for Forum Finance is The Forum Group of Companies Pty Ltd ACN 151 964 626, with the Sydney Premises listed on the ASIC search as its address.

17. A google search of Forum Finance returns a Dunn & Bradstreet web search which includes information about Forum Finance, a copy of which is at pages 44-46 of CMM-1. In this web search a link to the Forum Finance webpage is included, which directed me to the webpage with url: <https://www.forumgroup.com.au>.

Signed:  Taken by: 

18. The addresses listed on the Forum website include the Sydney Premises, the Melbourne Premises, the Perth Premises and the Brisbane Premises. A print out of the webpage showing the address details for the Forum Group is at pages 47-52 of the Exhibit. Based on that webpage I believe that Forum Finance operates from each of the premises I have identified, other than the Residential Premises.
19. As to the Residential Premises:
- (a) the ASIC Search for Forum Finance, lists the address for the second respondent as the Residential Premises;
 - (b) a personal name extract from the ASIC records for the second respondent also (a copy of which is at pages 53-76 of CMM-1) also listed the Residential Address as the address for the second respondent.
20. Based on these ASIC searches I believe that the Residential Premises is the address for the second respondent.

List of things

21. The following is a description of the things or the categories of things, in relation to which the Search Order is sought at each of the Premises:
- (a) All documents (hard copy and electronic records) concerning or which refer to the following agreements:
 - (i) the principal and agent agreement between Westpac and BHD Leasing with ACN 154 478 707 dated 8 May 2017;
 - (ii) the principal and agent agreement between Westpac and Eqwe Pty Ltd (formerly BHO Funding Ltd) ACN 630 535 554 dated 12 July 2019; and
 - (iii) the Master Sale of Receivable and Goods Agreement between Forum Finance and BHD Leasing with ACN 154 478 707 dated 31 August 2018; and
 - (iv) the Master Sale of Receivable and Goods Agreement between Forum Finance and Eqwe (formerly BHO Funding Ltd) ACN 630 535 554 dated 12 July 2019.
 - (b) All documents (hard copy and electronic records) concerning the entry into Payment Schedules, or other purchase orders or contracts with the following customers ("**Customers**"):

Signed:



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- (i) Veolia Environmental Services (Australia) Pty Ltd ACN 051 316 584
- (ii) WesTrac Pty Limited ACN 009 342 572
- (iii) ALH Group Pty Limited ACN 098 212 134
- (iv) Scentre Shopping Centre Management Pty Ltd ACN 000 712 710
- (v) Coles Supermarkets Australia Pty Limited ACN 004 189 708
- (vi) Catholic Healthcare Limited ACN 064 946 318
- (vii) The Martinez HWL Practice Trust & The East HWL Practice Trust & The Warat HWL Practice Trust & The Marin HWL Practice Trust & Others trading as 'HWL Ebsworth Lawyers' ABN 37 246 549 189,

(together referred to as **Customers**), including payment schedules on “Forum” or “Iugis” letterhead, executed payment schedules, draft payment schedules; documents referring to or concerning the contracts or payment schedules and any correspondence, communication or other evidence of the creation or execution of a Payment Schedule for a Customer or provision of a Payment Schedule to a Customer.

- (c) All documents (electronic or hard copy) headed Certificate of Acceptance of Delivery in relation to any payment schedule between Forum Finance Pty Ltd and any Customer.
- (d) All documents (electronic or hard copy) headed “Sale Notice” purporting to be issued by Forum Finance Pty Ltd to Eqwe Pty Ltd ACN 630 535 554, including any executed or draft Sale Notice and any correspondence, communication or other evidence of the issue of a Sale Notice to Eqwe.
- (e) All correspondence and other documents relating to any agreement with Eqwe.
- (f) All documents (electronic or hard copy) in relation to any funding provided to Forum Finance or the Customers, directly or indirectly, by Westpac in the period from 8 May 2017 to the date of these orders.
- (g) All documents (electronic or hard copy) in relation to the receipt, disbursement, payment, use or transfer of funds provided directly or indirectly to Forum Finance by Westpac or Eqwe into and out of the following accounts:
 - (i) the bank account with BSB 082 080 and account number 848483695 held with the National Australia Bank Limited (NAB); and

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- (ii) the bank account with BSB 082 080 and account number 761644257 held with the NAB
- (h) emails between Mr Bill Papas and:
 - (i) Mr Luke Price in relation to any Customer; and
 - (ii) any representative of a Customer.
- (i) Any electronic document recording telephone calls, sms messages, whatsapp (or other electronic messaging system or platform) messages or other electronic text messages between:
 - (i) Mr Papas and Mr Price in relation to a Customer; and
 - (ii) Mr Papas and any representative of a Customer in relation to a Payment Schedule with Forum Finance.

22. The search order is sought for the following reasons:

- (a) **Scale:**
 - (i) As deposed to in paragraphs 54 to 55 of the Anderson Affidavit, the potential quantum of the fraud that has been identified by Westpac is significant and the quantum of the fraud in Australia is estimated to be in the amount of AU\$254.5million
 - (ii) As deposed to in the O'Brien Affidavit at paragraph 46, the potential quantum of the fraud Westpac has identified in New Zealand is in the amount of NZ\$42million.
 - (iii) I am informed by Mark John of Westpac and verily believe that this combined total amount of the fraud across Australia and New Zealand is estimated to be approximately AU\$295million.
 - (iv) Further, if the information which Westpac has gathered is correct, including information provided to Westpac from the Customers, the fraud involves false signatures having being applied to documents for 100 separate transactions over a period from at least 2018 until June 2021.
 - (v) In light of the significant quantum, the number of transactions and the time period over which the fraud has occurred, Westpac holds concerns that the respondents are capable of destroying and removing documents and information which may be critical to the ongoing investigation into this

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Taken by:



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matter, and that their behaviour suggests that they may well act in that manner to delay or defeat an investigation into their conduct and proof of their conduct.

- (vi) Westpac is also concerned to protect any metadata in relation to those documents and to information in relation to the individual that edited or created the document, which is critical to a current proceedings, is not destroyed. If electronic records or the metadata is destroyed then this information will be unavailable for use in evidence in Court.

(b) **Mr Papas is not contactable:**

- (i) As set out in the Anderson Affidavit at paragraphs 44 to 52 on about 15 June 2021, Mr Anderson was informed that Mr Papas was travelling to Perth to meet with WesTrac, but that this meeting did not go ahead. As set out in paragraph 53 of the Anderson Affidavit, on 16 June 2021 Mr Price of Eqwe sent a text message to Mr Anderson which said that Mr Papas had gone into a Perth Hospital.
- (ii) I am informed by Mr Anderson and verily believe that the last contact that he had with the second respondent was on 15 June 2021, as set out in paragraph 10 of the Anderson Affidavit. I am informed by Mr Anderson and verily believe that Mr Anderson has had no further interaction with him since that time.
- (iii) On 21 June 2021, Mr Anderson received a letter (a copy of which is referred to at paragraph 33 below) which said "*in the absence of Mr Bill Papas, the company has formed an interim working group*" although it is unclear which company is being referred to in this letter.
- (iv) On 25 June 2021, Mr Rodney Owen from Westpac received an email from Mr Luke Price of Eqwe Pty Limited, a copy of which is at pages 77-79 of CMM-1, in which Mr Price refers to the "*disappearance of Bill Papas and lack of information coming out of the employees of Forum Group*".

(c) **Information critical:**

- (i) I believe that the material sought by the Search Order will be of central importance in the proposed proceeding before this Court and to Westpac's ongoing investigations in relation to the matters the subject of this

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proceedings and application, both as a source of proof of the fraud and also to identify the use or disbursement of funds and potential recoveries.

(d) **Risk of destruction:**

- (i) Given the nature and scale of the fraud that appears to have been perpetrated and the clear evidence received from Westpac's customers, Westpac considers that there is a real risk that the respondents will imminently seek to destroy any records relevant to these matters.

(e) **Likely damage to Westpac:**

- (i) The applicant does not presently have any information as to the status of the funds paid to the first respondent. At present, the only known source of such information is within the books and records held by the respondents.
- (ii) If the information which is held by the respondents is destroyed, then there may be no possibility of the respondent being able to identify the person or persons who have been the beneficiary or recipient of those funds.
- (iii) Based on my instructions from Rodney Owen, Head of Corporate, Victoria and South Australia Credit Restructuring at Westpac and Mr Anderson, the prejudice, loss or damage likely to be suffered by Westpac if the Search Order is not made is that Westpac has a financial exposure of at least \$254.5 million relating to the funds paid to Forum Finance.
- (iv) As set out above, Westpac New Zealand Business has been informed by Veolia Environmental Services (Australia) Pty Ltd that the total exposure of Westpac New Zealand Business under their arrangements with Eqwe and Forum Finance is \$42.8 million, all of which Veolia has stated is fraudulent.
- (v) Westpac's Structured Finance team has no direct exposure under the program with Forum Finance, however it is indirectly exposed through two customer securitisation programs, those being:
- (A) a \$2.3 million exposure with Thorn Group Limited (ACN 072 507 147) (of which there is no risk to Westpac and any loss would be met by Thorn Group); and
- (B) a \$750,000 exposure with Flexi Group.

Signed:



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Taken by:





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23. **Appointment of independent solicitors and independent IT forensic experts:**

- (a) Given that it is proposed that the search orders will be executed at five separate premises in New South Wales, Victoria, Brisbane and Perth, Westpac has obtained the consent of five experienced solicitors to act as independent solicitors. The details of each of those persons is set out in the table below. Copies of each of their current curriculum vitae are between pages 80 and 90 of CMM-1:

Proposed Search address attendance	Name	Address	Firm
Residential Premises	Anna Ross	Lvl 17, 8 Chifley, 8 -12 Chifley Sq, Sydney, NSW, 2000	Corrs Chambers Westgarth
Sydney Office of Forum Finance,	James Whittaker	Lvl 17, 8 Chifley, 8 -12 Chifley Sq, Sydney, NSW, 2000	Corrs Chambers Westgarth
Melbourne Premises	John Tuck	Lvl 25, 567 Collins Street, Melbourne, Vic, 3000	Corrs Chambers Westgarth
Perth Premises	Rachael King	Level 6 Brookfield Place Tower 2 123 St Georges Terrace Perth WA 6000	Corrs Chambers Westgarth
Brisbane Premises	Rod Dann	Level 42, One One One Eagle 111 Eagle Street Brisbane QLD 4000	Corrs Chambers Westgarth

- (b) I am informed by Mr Whittaker that after conducting conflict checks across the systems of Corrs Chambers Westgarth, that all of the people referred to in the table above are available to act as the independent solicitor.
- (c) I am informed by Westpac that Corrs Chambers Westgarth is not a Westpac panel firm.
- (d) At pages 91 to 122 of CMM-1 are copies of the emails which I sent to each of the above referred solicitors and the consents that I received from each of them.

Signed:  Taken by: 



24. In addition, Westpac has engaged IT forensic experts to assist in executing the search orders. In this regard, it is proposed that the persons identified in the table below, copies of whose CVs are between pages 123 and 143 to CMM-1, have consented to act:

Proposed Search address attendance	Name	Address	Firm
Sydney Office	Rod McKemmish	Suite 2, 301A Castlereagh Street Sydney NSW 2000	CYTER
Residential Premises	Yian Sun	Suite 2, 301A Castlereagh Street Sydney NSW 2000	CYTER
Melbourne Premises	David Caldwell	Level 18/114 William Street Melbourne VIC 3000	Forensic IT
Brisbane Premises	Michael Tarnawsky	Level 10, 12 Creek Street, Brisbane, QLD, 4000	BDO
Perth Premises	Darren Michael	Level 12, 197 St Georges Terrace, Perth, WA 8000	Evidence Advisory

- (a) At pages 144 to 169 of CMM-1 are copies of the emails which I sent to each of the above referred IT forensic experts and the consents that I received from each of them.
- (b) Each of the above IT experts have informed me and I verily believe, that neither they nor their respective firms have any present relationship which would interfere with their ability to carry out their role.

25. In relation to the Residential Premises, as set out above, I believe this to be Mr Papadimitriou's residential address based upon my review of the parts of the ASIC extracts with respect to Forum Finance (at pages x to x) and the personal search for Mr Papadimitriou which appear at pages 2 to 53 of CMM-1

26. I do not have any information as to the residents of that property, however, given this address is specified to be that of Mr Papas, I do not have any reason to believe that the only occupant/s of the Residential Premises would be likely to be female or child under the age of 18.

Signed: ...  Taken by: 

- 27. However, I refer to paragraph 53 of the Anderson Affidavit in which in which Mr Anderson deposes he recalled he received a text message from Luke Price which has been deleted from his phone that stated words to the effect of '*Bill is in a Perth Hospital. Anxiety or heart scare*'. I also refer to the email from Mr Price on 25 June 2021, which reported that Mr Papas was not home at that time but that another director and his partner were seen walking towards that residence.
- 28. I have not been able to ascertain any further information regarding Mr Papadimitriou's health status. In those circumstances, there is a possibility that he may be considered to be a '*vulnerable person*' within the meaning of paragraph 8(f)(iii) of PN-13 by reason of an 'infirmity'.

Possible defences available to the applicant



- 29. I consider that Forum Finance may deny wrongdoing as a fact, although in light of the evidence which I have seen I am uncertain whether it will advance that defence. I also do not know what defence it may raise against the claim for return of \$254.5m as a claim in debt or otherwise.
- 30. I believe that Mr Papas may deny wrongdoing. It is conceivable that he may assert that he knew nothing of the transactions, and that his signature on the documents is an electronic signature affixed by someone other than him. I do not know what other defence he may assert.

Undertakings

- 31. I have reviewed the undertakings to the Court which are set out in Schedule B to the Search Order Practice Note. I will provide those undertaking to the Court, and have received confirmation from the applicant that it will pay the costs and expenses of the independent solicitor and independent expert in relation to the execution of the Search Order.

Communications with Vobis Equity Attorneys

- 32. As deposed to in the Anderson Affidavit at paragraph 64, I note that Westpac instructed MinterEllison to send letters in response to the Vobis Letter (as defined in paragraph 64 of the Anderson Affidavit).
- 33. On 23 June 2021, MinterEllison sent a letter to Vobis in response to the Vobis Letter (**23 June MinterEllison Letter**). A copy of the 23 June MinterEllison Letter is at pages 170-171 of Exhibit CMM-1.

Signed: ...  Taken by: 

- 34. On 25 June 2021, MinterEllison sent a further letter to Vobis in relation to the 23 June MinterEllison Letter (**25 June MinterEllison Letter**). A copy of the 25 June MinterEllison Letter is at page 172 of Exhibit CMM-1.
- 35. On 25 June 2021, MinterEllison received a letter from Vobis in relation to the 23 June MinterEllison Letter and 25 June MinterEllison Letters (**Second Vobis Letter**). A copy of the Second Vobis Letter is at page 173 of Exhibit CMM-1. I note that in the Second Vobis Letter Mr Farmakidis stated "*[w]e are seeking instructions, which we expect to receive by 12 PM on Monday 28 June 2021*".
- 36. As at the time of swearing this affidavit, MinterEllison has not received any further communications from Vobis since receiving the Second Vobis Letter.

Suppression Order

- 37. The Applicant also seeks a suppression order in relation to the names of the Customers. This suppression order is sought due to the scale of the claims involved, and to permit time for the Customers to be notified of this application such that they may be provided with the opportunity to make any claims for confidentiality or suppression orders in relation to documents and information which has been included in the affidavits in support of this application.
- 38. I am also informed by Mr Anderson and Mr O'Brien that certain of the Customers are continuing their internal investigations in relation to the contracts with Forum Finance. The suppression orders would assist to preserve the confidentiality of those investigations.

Sworn by the deponent
at Sydney
in New South Wales
on 28 June 2021

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Signature of deponent

Before me:



Signature of witness

Simon Henry Brandis

Solicitor

Signed:

Taken by:

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:



Signed:

Taken by:

Schedule of Parties

No. of 2021

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

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**