

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 2/07/2021 10:12:17 AM AEST 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 v FORUM
FINANCE PTY LIMITED & ANOR
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF
AUSTRALIA



Sia Lagos

Dated: 2/07/2021 10:13:30 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.

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.



Form 59
Rule 29.02(1)

Affidavit

No. NSD616 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: 2 July 2021

Contents

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1.	Affidavit of Caitlin Maria Murray sworn on 2 July 2021 in support of the plaintiff's Interlocutory process filed 28 June 2021	1	2
2.	Exhibit CMM-2 being a paginated bundle of documents	2	2

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**). I have sworn two previous affidavit in these proceedings on 28 June 2021.
2. Exhibited to me at the time of swearing this affidavit is a paginated bundle of documents marked 'Exhibit CMM-2' (**CMM-2**). Throughout this affidavit I refer to documents which appear within CMM-2.

Service on respondents

3. On 28 June 2021:
 - (a) at 2:10pm, I sent an email to francis.farmakidis@vobis.com.au, being the address specified for service on the first respondent in the orders made on 28 June 2021 in these proceedings (**28 June Orders**), and which I knew to be the email address of Francis Farmakidis, the legal representative for Forum Finance and Mr Papas, enclosing by way of service:
 - (i) 28 June Orders;
 - (ii) the Originating application filed 28 June 2021 (**Originating application**);
 - (iii) Interlocutory application filed 28 June 2021 (**Interlocutory application**);
 - (iv) Affidavit of Geoffrey Keith Anderson sworn on 28 June 2021 (**Anderson Affidavit**);
 - (v) Affidavit of Caitlin Maria Murray sworn on 28 June 2021 (**First Murray Affidavit**);
 - (vi) Affidavit of Nicholas Antony O'Brien sworn on 27 June 2021 (**First O'Brien Affidavit**);
 - (vii) Second affidavit of Caitlin Maria Murray sworn on 28 June 2021 (**Second Murray Affidavit**);
 - (viii) Submissions in support of the Interlocutory application (**Submissions**); and
 - (ix) a transcript of the hearing in these proceedings which commenced at 10.30am on 28 June 2021 (**Transcript**); and

Signed:



.....

Taken by:



.....

(b) at 2.19pm, I sent a further email in reply to my email to Mr Farmakidis outlined at 3(a) above containing a folder within MinterEllison's sharefile program Accellion which contained:

- (i) Exhibit GKA-1 to the Anderson Affidavit;
- (ii) Exhibit NOB-1 to the First O'Brien Affidavit; and
- (iii) Exhibit CMM-1 to the First Murray Affidavit,

(together, the **Vobis Service Emails**). A copy of the Vobis Service Emails (without their attachments) is at pages 1 to 2 of CMM-2.


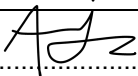
4. On 28 June 2021 at 3:35pm, I sent an email to bpapas@forumgroup.com.au, enclosing by way of service:

- (a) the 28 June Orders;
- (b) the Originating application;
- (c) the Interlocutory application;
- (d) Transcript;
- (e) a link to a folder within MinterEllison's sharefile program Accellion which contained:
 - (i) the Anderson Affidavit and exhibit GKA-1;
 - (ii) the First Murray Affidavit and exhibit CMM-1;
 - (iii) the First O'Brien Affidavit and exhibit NOB-2;
 - (iv) the Second Murray Affidavit; and
 - (v) the Submissions.

5. A copy of the email which I sent to Mr Papas (without its attachments) is at pages 3 to 4 of CMM-2. Although my email indicates that exhibits GKA-1, CMM-1 and NOB-1 would be served separately via Accellion link, these exhibits were contained within the Accellion link within my email of 3:35pm and were not sent in a separate email or link.

Solicitor correspondence

6. Between 28 June 2021 and 1 July 2021, MinterEllison exchanged correspondence with Vobis Equity Attorneys (**Vobis**) (**Vobis Correspondence**). A copy of the Vobis

Signed:  Taken by: 

Correspondence (excluding the Vobis Service Emails) and the Fortis Correspondence is at pages 5 to 40 of CMM-2.

7. The Vobis Correspondence includes an email from Alexander Carlos, Associate at Vobis which I received at 9.20am on 30 June 2021 that said:

"We have been advised overnight by email by the director of Forum Finance Pty Ltd that our firm is no longer instructed to act for Forum Finance Pty Ltd.

We understand new solicitors are being appointed shortly and they will contact you in due course."

8. At 2.45pm on 30 June 2021, I received an email from Francis Farmakidis of Vobis attaching a letter (**2.45pm Vobis Letter**), that said:

" We confirm that we act for The Forum Group of Companies Pty Ltd and its subsidiaries ("FGOC") and Iugis Pty Ltd and its subsidiaries ("Iugis") and that we no longer act for Forum Finance Pty Limited, and we do not act in the proceedings."

9. Following receipt of the 2.45pm Vobis Letter, I caused company searches to be conducted of The Forum Group of Companies Pty Limited (ACN 151 964 626) and Iugis Pty Limited (ACN 632 882 243). Those company searches indicated that the sole director of each of those companies was the second respondent, Mr Papadimitriou.

10. I also caused searches of the ASIC register for the following companies (referred to on page 2 of the letter) to be undertaken:

- (a) Iugis Waste Solutions Pty Ltd (ACN 647 212 299);
- (b) Forum Finance Pty Ltd (ACN 153 301 372);
- (c) Forum Group Pty Ltd (ACN 153 336 997);
- (d) Forum Enviro Pty Ltd; and
- (e) IMAGETEC Solutions Australia Pty Ltd and IMAGETEC Financial Services Pty Ltd noting 'IMAGETEC' is referenced at page 2 of the 2.45pm Vobis Letter.

11. The searches for each of these companies, save for Forum Finance, showed that Mr Papadimitriou was the sole director of each company,

12. A copy of the ASIC extracts obtained during the searches referred to paragraphs 9 and 10 above is at pages 41 to 115 of CMM-2.

Signed:



Taken by:



13. At 9.58pm on 30 June 2021, I was copied to an email from Francis Farmakidis of Vobis which advised:

We have been advised this evening that we no longer act for the Forum Group of Companies Pty Ltd and its related parties in relation to these proceedings.

We understand that Mr Christopher Nehme (cnehme@fortislaw.com.au)of [sic] Fortis Law is now acting for these companies and for the First Respondent.

14. Following Mr Farmakidis' email described at paragraph 13 above, between 30 June 2021 and 1 July 2021, I exchanged correspondence with Fortis Law (**Fortis Correspondence**).
15. On 1 July 2021, I received an email from Rocco Panetta of Panetta Lawyers. A copy of that email is within is at pages 39 to 40 of CMM-2.

Update on Westpac's exposure

16. Since filing these proceedings, I am instructed by Rodney Owen, Head of Corporate, Victoria and South Australia, Credit Restructuring at Westpac that Westpac's total exposure in connection with the Forum Finance / Eqwe programme has reduced slightly during the course of this week as a number of payments have been made. I understand from Mr Owen and verily believe that:
- (a) since the commencement of this proceeding on 28 June 2021, Westpac has received approximately \$300,000 as a result of a sweep of funds that were held in the Eqwe collections account;
 - (b) this is the account which held the funds received from Forum Finance and from which Westpac's systems regularly applied a sweep and allocated payments against certain Customer contracts;
 - (c) as at 12pm 1 July 2021, Westpac's exposure in connection with the Forum Finance Program was \$254,219,440.23.
17. At page 116 of CMM-2 is a schedule which has been generated by Westpac from its records showing the month end balances that its systems recorded as being the amounts owing by the Customers, which had been sold to Eqwe as Westpac's agent in the period September 2018 to June 2021.

Signed: 

Taken by: 

18. At page 117 of CMM-2 is a graph which has been generated by Westpac, which shows the monthly drawdown profile of amounts pursuant to the arrangements the subject of these proceedings on a Customer by Customer basis since September 2018.

Demand

19. At 12.34pm on 1 July 2021, I was copied to an email from Anthony Sommer, a solicitor in my employ, which was sent to Joshua Frangi and Christopher Nehme of Fortis Law attaching:
- (a) a 'Demand for Repurchase Master Sale of Receivables and Goods Agreement' (**Demand**); and
 - (b) a letter to Fortis Law from MinterEllison dated 1 July 2021.
20. A copy of Mr Sommer's email and its attachments outlined at paragraph 19 above is at pages 118 to 128 of CMM-2.
21. I am informed by Simon Brandis, a solicitor in my employ at MinterEllison, and verily believe, that at approximately 2.04pm on 1 July 2021:
- (a) he attended 141 Walker Street, North Sydney, the location of the building within which the principal place of business of the First respondent is located and saw a sign which directed persons who want access to Level 5 to call 0424 165 027;
 - (b) he called the mobile number described above and a man came down the lift and escorted him to level 5;
 - (c) at level 5, he asked if anyone who worked for 'Forum' was in the office;
 - (d) he was directed to a female person;
 - (e) Mr Brandis and the female person had a conversation in words to the following effect:

Mr Brandis: Do you work at Forum?

Female: Yes.

Mr Brandis: This is a demand which I need to serve on Forum Finance.
 - (f) Mr Brandis then handed the female person the Demand which she took. Mr Brandis then said:

Signed:




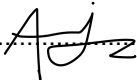
Taken by:



You should bring this document to the attention of the relevant officer from Forum Finance.

Winding-up notice

- 22. On 29 June 2021 at 12.51pm, I was copied to an email from Mr Sommer sent to 'form519documents@asic.gov.au' which attached a copy of ASIC Form 519 – Notification of court action relating to winding up with respect to the First respondent. A copy of this email including its attachment is at pages 129 to 133 of exhibit CMM-2.
- 23. On 1 July 2021 at 12.11pm, I received an email from Mr Sommer which was also sent to Joshua Frangi of Fortis Law and copied to Christopher Nehme of Fortis Law. This email attached:
 - (a) a sealed copy of a consent of liquidators signed by Jason Preston and Jason Ireland of McGrath Nichol, Level 12, 20 Martin Place, Sydney NSW 2000; and
 - (b) a sealed copy of consent of provisional liquidators signed by Messrs Preston and Ireland.
- 24. A copy of this email is at pages 134 to 135 of CMM-2.

Signed:  Taken by: 

Sworn by the deponent
at Sydney
in New South Wales
on 2 July 2021

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Signature of deponent

Before me:



Signature of witness
, Solicitor

Andrew John Clarke, Level 40,
Governor Macquarie Tower, One
Farrer Place, Sydney NSW 2000

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 known the deponent for over twelve months.

Signed:

Taken by:

Schedule of Parties

No. NSD616 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**