

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 12/07/2021 1:48:03 PM 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 & ORS
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF
AUSTRALIA



Sia Lagos

Dated: 13/07/2021 8:34:16 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. NSD 616 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: 12 July 2021

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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 applicant, Westpac Banking Corporation (**Westpac**). I am also the solicitor for Westpac New Zealand (**WNZ**) and Capital Finance Australia Limited (**CFAL**).
2. I have previously sworn affidavits in relation to these proceedings, including:
 - (a) affidavits sworn on 2 July 2021 (**Third and Fourth Affidavit**); and
 - (b) my sixth affidavit sworn on 8 July 2021 (**Sixth Affidavit**).
3. This affidavit is sworn in support of Westpac's:
 - (a) Interlocutory Application dated 12 July 2021 seeking orders pursuant to section 23 of the *Federal Court of Australia Act 1976 (Cth)* and/or rule 7.22 of the FCR and/or rule 20.23 of the FCR that the National Australia Bank Limited ABN 12 004 044 937 (**NAB**) give discovery to the Applicant; and
 - (b) Interlocutory Application dated 12 July 2021 seeking orders that Jason Ireland and Jason Preston of McGrath Nicol, Level 12, 20 Martin Place Sydney NSW, be appointed as provisional liquidators to the proposed fourth to eighth respondents.
4. Exhibited to me at the time of swearing this affidavit is a paginated bundle of documents marked 'Exhibit CMM-5' (**CMM-5**). Throughout this affidavit I make reference to documents which appear at CMM-5.
5. I have also read the affidavits of Geoffrey Anderson (28 June 2021 and 8 July 2021) and Nick O'Brien (27 June and 2 July 2021) (together, **the Anderson and O'Brien Affidavits**).
6. A copy of the results of a search of the records of the Australian Securities and Investment Commission dated 12 July 2021 in relation to each of the proposed fourth to eighth respondents is at pages 1 to 63 of CMM-5.

Background to the Proceedings

7. Westpac, in June 2021, uncovered that in excess of \$250 million that it had paid to the first respondent, Forum Finance Pty Ltd (**Forum Finance**), between September 2018 and June 2021, appeared to have been paid pursuant to contractual arrangements which appear, at least prima facie, to be fictitious and falsified contracts. The details of the

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contracts and the falsity of those contracts is set out in the Anderson and O'Brien Affidavits, which I have read.

8. These proceedings were commenced by Westpac on 28 June 2021 seeking relief against Forum Finance Pty Limited (the entity to whom I am informed by Mr Anderson and believe the funds were paid) and Basile Papadimitriou (a director of Forum Finance). On 8 July 2021, Vincent Tesoriero (who is recorded on the ASIC register as a director of Forum Finance) was joined as the third respondent to the proceedings. A copy of the current ASIC search for Forum Finance is at pages 64 to 75 of CMM-5.

Analysis of Bank Account Statements

9. As set out above, I am informed by Mr Anderson and verily believe that Westpac paid to Forum Finance an amount in excess of \$250 million, pursuant to contracts which do not appear to have been bona fide. I am informed by Mr Anderson and verily believe that all of the funds which Westpac paid to Forum Finance were paid into a NAB bank account with account details BSB 082-080, account number 848483695 (**Forum Finance Account**).
10. On 2 July 2021, a subpoena to produce documents was issued to NAB seeking production of documents including statements of account for the period from 1 August 2018 to date for accounts held in the name of Forum Finance including the Forum Finance Account. The subpoena also sought account statements for any account in the name of, or to the benefit of Mr Basile Papadimitriou (also known as Bill Papas (**Mr Papas**)).
11. In response to this subpoena, on 8 July 2021, NAB produced various documents to the Court, including bank account statements in respect of:
- (a) the following accounts held by Forum Finance:
 - (i) the Forum Finance Account; and
 - (ii) BSB: 082-080 Account: 12-175-9670 (**9670 Account**); and
 - (b) the account held by Forum Group Pty Ltd BSB: 082-080 Account 76-164-4257 (**4257 Account**),
- (together, the **Relevant Accounts Bank Statements**).
12. The Relevant Accounts Bank Statements are between pages 76 to 255 of the CMM-5.

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13. I have caused solicitors employed by MinterEllison and under my supervision to conduct an analysis of the statements produced by NAB. Recorded on the Forum Finance Account are a number of credit amounts with a description that includes the word "Westpac" or "WBC". Our preliminary analysis indicates that these payments coincides with drawdowns in relation to the purported customer contracts. From a review of the Forum Finance Account statements, it appears that on regular occasions, the credit amount received from Westpac into that account is debited out of the Forum Finance Account shortly after the funds are received. The debit of the funds often includes in the description "Fgfs".
14. I am aware that within the Forum Group of companies there is a company named Forum Group Financial Services Pty Ltd (administrators appointed) (**FGFS**). A list of the companies that, based on a review of ASIC searches, are companies within the Forum Group of companies is at Annexure A to this affidavit. From this list, I suspect that a reference to "Fgfs" on the Forum Finance Account is a reference to FGFS, but I will not be able to confirm that without access to the bank statements for the companies across the Forum Group of companies.
15. MinterEllison has also conducted an analysis of the Relevant Account Bank Statements. Recorded in the descriptions for various payments recorded in the Relevant Bank Account Statements are descriptions that appear to relate to the names of the fourth to eight respondents. At pages 256 to 282 of CMM-5 are tables prepared by MinterEllison which summarise payments that based on their payment descriptions may have been between:
- (a) Forum Finance and the fourth respondent (**Forum Group Financial Services**), showing the total amount in excess of \$277 million being transferred from Forum Finance with a description that appears to relate to Forum Group Financial Services;
 - (b) Forum Finance and the fifth respondent (**Forum Group**), showing the total amount in excess of \$25 million being transferred from Forum Finance with a description that appears to relate to Forum Group; and
 - (c) Forum Finance and the sixth respondent (**Forum Enviro (Aust)**) or seventh respondent (**Forum Enviro**) showing the total amount in excess of \$13 million being transferred from Forum Finance with descriptions that appear related to these entities.

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16. While it appears from the Relevant Bank Account Statements and an analysis of those statements that the funds have been transferred to FGFS, Forum Group and Forum Enviro (Aust) and / or Forum Enviro, Westpac requires access to the bank statements for the other companies in the companies in the Forum Group (which are all now under external administration as of 9 July 2021) in order to complete this analysis.

Papas accounts

17. In addition to the transactions in relation to the accounts referred to in held in 11 above, in response to the subpoena NAB also produced a number of account statements for accounts in the name of Basile Papadimitriou (also known as Bill Papas, the second respondent).
18. From a review of those accounts, it appears:
- (a) on 1 November 2018, an amount of \$110,000 is paid into an account in the name Basile and Jenny Papadimitriou, being account 87-294-7824 with the description "Forum Enviro Forum E Nviro". On 13 November 2018, an amount of \$112,000 was paid out of this account with the description "J Papadimitriou". A copy of the extract of the bank account statement for this transaction is at pages 283 to 284 of CMM-5;
 - (b) on 17 August 2020, Mr Papas received in the account in his name numbered 78-125-4432 the amount of \$1.9 million from "Forum Group Pty Ltd Forum Group" and \$2.2 million from "Forum Group Financia Fgfs" and he then transferred \$4,415,790.44 to "Ellinikos tourismos" for "Purchase of A Busine". A copy of the extract of the bank account statement for this transaction is at page 285 to 288 of CMM-5. A copy of an article in the Greek Herald dated 26 August 2020 reported that Mr Papas was due to "take over Greek Super League side Xanthi FC". A copy of this article is at pages 289 to 290 of CMM-5;
 - (c) on 10 December 2020, in excess of \$1.79 million is paid into an account in the name Aramia Holding (as trustee for the Papadimitriou Family Trust), being account 12-440-6010 (**Aramia Account**), with the description "Forumcapitalreturn F Goc";
 - (d) on 22 December 2020, \$1.79 million was paid out of the Arama Account with description "2080-969896572". It appears by the reference "2080" that this is a

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payment to another NAB account. A copy of the bank statement showing the transactions referred to in (c) and (d) is pages 291 to 292 of CMM-5;

- (e) on 7 May 2021, an amount of \$461,000 was paid in to the Aramia Account by a linked account transaction, the transaction is described as "Spartan Cons". On 10 May 2021, an amount of \$461,000 was paid out of the Aramia Account with description "2062-778470249 Family Payment". A copy of the bank statement showing these transactions is pages 293 to 294 of CMM-5.

Advice from McGrath Nicol with respect to attempted access to bank accounts of Forum Finance

19. I am informed by Mr Ireland, one of the Court appointed liquidators of Forum Finance, and verily believe, that:
- (a) on 11 July 2021 Mr Ireland sought to obtain access to the internet banking platform of the accounts of Forum Finance which were held with NAB;
- (b) Mr Ireland was advised by Craig Rollinson, who identifies himself on LinkedIn as the Executive General Manager Operations of Forum Group (pages 295 to 300 of CMM-5 that Forum Finance and other companies related to it had a shared NAB online banking platform with a single user name and password across all of the Forum Group accounts.

Access to NAB records

20. Based on the information set out in paragraphs [13] to [19] above, I reasonably believe that NAB, as the bank with which the Forum companies appear to hold bank accounts, will have documents which will assist in identifying the recipients of the payments. This information is necessary in order to allow the further tracing of the funds to occur, and to identify additional potential respondents who were involved in or benefited from the conduct the subject of the proceedings.

Voluntary Administrators appointed

21. During the hearing in this proceeding on 9 July 2021, I became aware that Domenico Alessandro Calabretta, Grahame Robert Ward and Thyge Trafford-Jones of Mackay Goodwin (**Administrators**) had been appointed as voluntary administrators of Forum Group.

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Taken by:



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22. I am informed by Anthony Sommer of MinterEllison and verily believe that he caused a search of the ASIC register to be conducted and from those searches determined that the Administrators has been appointed to the following companies:

	Company name	ACN
1.	The Forum Group of Companies Pty Limited (Administrators Appointed)	151 964 626
2.	Forum Group Pty Ltd (Receivers Appointed) (Administrators Appointed)	153 336 997
3.	Forum Group (QLD) Pty Ltd (Administrators Appointed)	103 609 678
4.	Forum Group (VIC) Pty Ltd (Administrators Appointed)	153 062 018
5.	Forum Fleet Pty Limited (Administrators Appointed)	155 440 994
6.	Forum Enviro Pty Ltd (Administrators Appointed)	168 709 840
7.	Forum Direct Pty Ltd (Administrators Appointed)	054 890 710
8.	Forum Enviro (Aust) Pty Ltd (Administrators Appointed)	607 484 364
9.	Forum Group Financial Services Pty Ltd (Administrators Appointed)	623 033 705
10.	Iugis Pty Ltd (Administrators Appointed)	632 882 243
11.	Iugis Investments Pty Ltd (Administrators Appointed)	647 627 745
12.	Iugis Waste Services Pty Ltd (Administrators Appointed)	647 212 299
13.	Imagetec Financial Services Pty Ltd (Administrators Appointed)	111 978 182
14.	Imagetec Solutions Australia Pty Ltd (Administrators Appointed)	074 715 718
15.	Onesource Australia Holdings Pty Limited (Administrators Appointed)	120 463 541
16.	Smartprint Fleet Management Pty Ltd (Administrators Appointed)	132 807 080
17.	Autonomous Energy Pty Ltd (Administrators Appointed)	113 593 383
18.	Orca Enviro Solutions Pty Ltd (Administrators Appointed)	626 552 645
19.	Orca Enviro Systems Pty Ltd (Administrators Appointed)	627 597 782

23. This includes, relevantly, the companies to which Westpac is concerned funds were transferred directly by Forum Finance, namely Forum Group, Forum Group Financial Services, Forum Enviro, and Forum Enviro (Aust).

Consent to act

24. At pages 301 to 316 of CMM-5 are copies of the consents of Jason Preston and Jason Ireland of McGrathNicol to act as provisional liquidators or liquidators of Forum Group, Forum Group Financial Services, Forum Enviro, and Forum Enviro (Aust).
25. I am informed by Mark John of Westpac and verily believe that Westpac are prepared to provide funding, by way of an indemnity for an initial amount of \$200,000, to McGrath Nicol in the performance of any work as provisional liquidators or liquidators of Forum

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Group, Forum Group Financial Services, Forum Enviro, and Forum Enviro (Aust). This amount of \$200,000 is in addition to the current indemnity of \$250,000 provided with respect to Forum Finance, which will provide McGrath Nicol with a total indemnity of \$450,000 if they are appointed as provisional liquidators or liquidators of Forum Group, Forum Group Financial Services, Forum Enviro, and Forum Enviro (Aust).

Correspondence with solicitors for Mackay Goodwin

26. I caused a letter to be sent to the solicitors for the Administrators on 12 July 2021, which is at pages 317 to 321 of CMM-5.

Sworn by the deponent
at Sydney
in New South Wales
on 12 July 2021

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Signature of deponent

Before me:



Signature of witness
Simon Henry Brandis
Solicitor
Level 40, Governor Macquarie Tower, One
Farrer Place 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**
Third Respondent **Vincenzo Frank Tesoriero**
Fourth Respondent: **Forum Group Financial Services Pty Ltd (Administrators Appointed) ACN 623 033 705**
Fifth Respondent: **Forum Group Pty Ltd (Receivers Appointed) (Administrators Appointed) ACN 153 336 997**
Sixth Respondent: **Forum Enviro Pty Ltd (Administrators Appointed) ACN 168 709 840**
Seventh Respondent: **Forum Enviro (Aust) Pty Ltd (Administrators Appointed) ACN 607 484 364**
Eighth Respondent: **The Forum Group of Companies Pty Ltd (Administrators Appointed) ACN 151 964 626**