

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 & ORS
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF
AUSTRALIA



Sia Lagos

Dated: 14/07/2021 5:01:23 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.

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Affidavit

No. NSD616 of 2021

Federal Court of Australia
District Registry: NSW
Division: Commercial and Corporations

Westpac Banking Corporation

Applicant

Forum Finance Pty Limited (ACN 153 301 172) (In Liquidation) and others

Respondents

Affidavit of: **IAN TIMOTHY BOLSTER**
Address: Level 11, 5 Martin Place, Sydney NSW 2000
Occupation: Solicitor
Date: 14 July 2021

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	Affidavit of Ian Timothy Bolster in support of interlocutory process filed on 12 July 2021		
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4.	Exhibit "ITB-4", being copies of relevant bank statements for the Forum Finance Account.	13	5


Witness


Deponent

Filed on behalf of (name & role of party) Societe Generale (ABN 71 092 516 286), supporting creditor
Prepared by (name of person/lawyer) Ian Timothy Bolster / Matthew Youssef
Law firm (if applicable) Ashurst Australia
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Address for service Ashurst Australia
(include state and postcode) Level 11, 5 Martin Place, Sydney NSW 2000

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5.	Exhibit "ITB-5", being a copy of the letter from Ashurst Australia to Hilton Bradley dated 13 July 2021	17	5
6.	Exhibit "ITB-6" being a copy of the letter from Minter Ellison to Hilton Bradley dated 14 July 2021	19	6

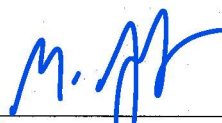
I Ian Timothy Bolster of Level 11, 5 Martin Place, Sydney in the State of New South Wales, Solicitor, say on oath:

Introduction

- 1 I am a partner at Ashurst Australia (**Ashurst**), and the solicitor on record for Societe Generale (ABN 71 092 516 286) (**SG**), the applicant in Federal Court of Australia proceeding number NSD642/2021 (**SG proceeding**).
- 2 The contents of this affidavit are true and correct to the best of my knowledge and belief as at the time of swearing this affidavit.
- 3 The SG proceeding concerns a claim by SG against Forum Finance Pty Limited (In Liquidation) (ACN 153 301 172) (**Forum Finance**) and Mr Basile Papadimitriou (also known as Bill Papas) (**Mr Papas**), who are also the first and second respondents in proceeding NSD616/2021 in which Westpac Banking Corporation (**Westpac**) is the applicant (**Westpac proceeding**). Exhibited and marked "ITB-1" is a copy of the originating application and concise statement (**SG Concise Statement**) filed in the SG proceeding on 1 July 2021.
- 4 SG has been served with a copy of an interlocutory application filed in the Westpac proceeding on 12 July 2021 (and which is listed for hearing on 15 July 2021) which relates to, among other things, the appointment of Mr Jason Preston and Mr Jason Ireland as provisional liquidators of the Forum Group of Companies (as defined in that interlocutory application). I also understand Westpac will seek that Ms Katherine Sozou be appointed as provisional liquidator. SG seeks leave to appear on that application. It's interest is in respect of supporting the appointment of Mr Preston, Mr Ireland and Ms Sozou as the provisional liquidators of those companies.

Initial correspondence with the administrators' solicitors

- 5 On 12 July 2021, Ashurst was copied to a letter from Minter Ellison (**Minters 12 July Letter**), the solicitors for Westpac, to Hilton Bradley, the solicitors for Domenico Alessandro Calabretta, Grahame Robert Ward and Thyge Trafford-Jones of Mackay



 Witness



 Deponent

Goodwin in their capacities as joint and several administrators (**Administrators**) of companies associated with Mr Papas and Forum Finance, being the companies set out in the schedule to that letter (**Administration Companies**). Exhibited and marked "ITB-2" is a copy of the Minters 12 July Letter.

6 Among other things, the Minters 12 July Letter:

- (a) sought the Administrators consent to Mr Preston and Mr Ireland replacing them as administrators of the Administration Companies (and any other related entities to which they have been appointed) and to resign prior to the first creditors meeting of those companies; and
- (b) referred to Westpac's intention to apply to the Court for orders that some or all of the Administration Companies be wound up by the Court and Mr Preston and Mr Ireland be appointed as liquidators of those companies.

7 On 12 July 2021, Ashurst sent a letter to Hilton Bradley (**Ashurst 12 July Letter**), a copy of which is exhibited and marked "ITB-3" (excluding enclosures, which are the documents set out in Exhibit ITB-1).

8 The Ashurst 12 July Letter informed the Administrators:

- (a) of SG's claim against Forum Finance and Mr Papas, and in particular, SG's claim that Forum Finance held the sum of \$8,688,398 on trust for SG;
- (b) that SG was investigating the whereabouts of those monies, and if those monies had been transferred to any of the companies over which the Administrators had been appointed, or had been used to acquire assets in those companies' names, SG's assertion that those funds and assets were held on trust for SG, and those companies owed fiduciary obligations to SG as trustee;
- (c) requested that the Administrators inform Ashurst as soon as they become aware of any such funds or assets being held with any of the companies over which they have been appointed; and
- (d) requested that the Administrators copy Ashurst into any correspondence being exchanged with Westpac's solicitors concerning Mr Preston and Mr Ireland from McGrathNicol taking over administration of the companies.



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Discovery that SG's funds were transferred to one of the companies under administration

9 As set out in the SG Concise Statement and the affidavit of Mr Thong sworn on 30 June 2021 filed in the SG proceeding, the monies the subject of SG's trust claim were paid into Forum Finance's account National Australia Bank account with BSB 082 080 and account number 84-848-3695 (**Forum Finance Account**). SG made payments as follows:

(a) On 9 March 2021, SG paid the sum of \$4,128,757 (**First Payment**) into the Forum Finance Account.

(b) On 6 May 2021, SG paid the sum of \$2,299,539 (**Second Payment**) into the Forum Finance Account.

(c) On 24 May 2021, SG paid the sum of \$2,558,902 (**Third Payment**) into the Forum Finance Account.

10 On 13 July 2021, SG obtained access to documents that had been produced by NAB in the Westpac proceeding, and in particular, the bank statements for the Forum Finance Account (**Forum Finance Statements**).

11 The Forum Finance Statements record that shortly after each of the First Payment, Second Payment and Third Payment were made by SG into the Forum Finance Account, an identical figure was paid out of the Forum Finance Account into an account described as "Forum Grp FS".

12 That is:

(a) the First Payment was received into the Forum Finance Account on 9 March 2021, and on the same day it was transferred (to the dollar) to "Forum Grp FS" (followed by what appears to be a transaction number or reference);

(b) the Second Payment was received into the Forum Finance Account on 7 May 2021 and on the same day it was transferred (to the dollar) to "Forum Grp FS" (followed by what appears to be a transaction number or reference).

(c) the Third Payment was received into the Forum Finance Account on 24 May 2021 and on the same day it was transferred (to the dollar) to "Forum Grp FS" (followed by what appears to be a transaction number or reference).



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- 13 Exhibited and marked "ITB-4" are copies of the relevant Forum Finance Statements. The transactions relating to the First Payment are on page 24 of the exhibit, and the transactions relating to the Second Payment and Third Payment are on page 27 of the exhibit.
- 14 In respect of the reference to "Forum Grp FS" in the Forum Finance Statements, one of the other companies associated with Mr Papas is Forum Group Financial Services Pty Ltd (Administrators Appointed) (ACN 623 033 705) (FGFS).
- 15 According to the ASIC records for FGFS, Mr Papas is the sole director and secretary, and is also a shareholder (together with Vincenzo Tesoriero, the other recorded director of Forum Finance).

Further correspondence with the Administrators' solicitors

- 16 FGFS is one of the companies over which the Administrators have been appointed and it is listed in the schedule to the letter referred to in paragraph 7 above.
- 17 On 13 July 2021, shortly after identifying the matters set out in paragraphs 10 to 13 above, Ashurst sent a letter to Hilton Bradley (**Ashurst 13 July Letter**), a copy of which is exhibited and marked "ITB-5".
- 18 The Ashurst 13 July Letter:
- (a) noted that it had come to SG's attention that the funds it had paid to Forum Finance and which were held on trust for it had been transferred to FGFS, and set out the basis for that view;
 - (b) confirmed that Mr Papas is the sole director and secretary, and is a shareholder, of FGFS (together with Vincenzo Tesoriero, the other recorded director of Forum Finance), and SG considers that FGFS had received those funds knowing that Forum Finance held them on trust for SG, that on receipt of the funds FGFS held those funds on SG, and that SG is a creditor of FGFS in respect of those funds;
 - (c) indicated that SG's investigations were continuing and to the extent the funds had been further transferred to any of the companies over which the Administrators had been appointed, then the Ashurst 12 July Letter continued to apply; and

(d) asked that if the Administrators are aware of what happened to the Trust Funds when it was received by FGFS and/or has bank statements for the FGFS Account for the relevant period above, then this information should be provided to Societe Generale immediately; and

(e) further requested Ashurst be provided with all correspondence from their office to Westpac's solicitors concerning the appropriate persons to act as administrators.

Proposed sale of assets and shutting down of businesses

19 On 14 July 2021, I was copied in on a letter from Minter Ellison to Hilton Bradley (**Minters 14 July Letter**), a copy of which is exhibited and marked "ITB-6".

20 The Minters 14 July Letter refers to a letter sent by Hilton Bradley to Minter Ellison sent at 5:47pm on 13 July 2021 (**HB 13 July Letter**) and includes what appears to be some quotes from that letter.

21 I understand from the Minters 14 July Letter that the HB 13 July Letter referred to attempts or proposals by the Administrators to sell assets of the Administrator Companies.

22 To the best of my knowledge, Hilton Bradley did not copy or provide to Ashurst a copy of its HB 13 July Letter notwithstanding that the Ashurst 12 July Letter and the Ashurst 13 July Letter informed the Administrators:

(a) of SG's trust claims (including its entitlement to follow the amounts held on trust for it and trace those monies into any assets that may have acquired to it);

(b) that SG had already identified that the monies held on trust for it was transferred to FGFS (being one of the Administration Companies); and

(c) of the need to investigate the whereabouts of its funds and whether any assets had been acquired using those funds.

Lack of communication from the Administrators

23 Ashurst has received no response or acknowledgement from the Administrators or their solicitors in respect of the Ashurst 12 July Letter, the Ashurst 13 July Letter or in respect of the administration in any way. The assertions made in the Ashurst 12 July Letter, including that SG is a creditor of FGFS, or that monies paid by SG to Forum Finance had been transferred to FGFS, have not been disputed by the Administrators.

Witness

Deponent

Ashurst has also not received any communication from the Administrators as to the current whereabouts of the funds that were transferred into FGFS' account.

24 To the best of my knowledge, SG has also not received any communication from the Administrators in respect of the above matters.

25 Further, although Ashurst is aware that Westpac's solicitors have received correspondence from the Administrators' solicitors, that correspondence has not been provided by the Administrators or their solicitors to Ashurst. To the extent that Ashurst has any knowledge of the conduct of the Administrations, that knowledge has come from Westpac.

Communications with McGrathNicol's solicitors and support for McGrathNicol to be appointed as provisional liquidators

26 Ashurst has engaged with the solicitors for Mr Ireland and Mr Preston, and I have had a constructive discussion with their solicitors concerning the status of their investigation.

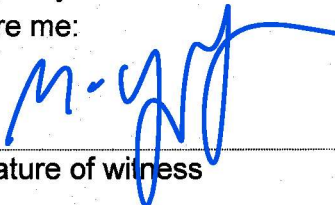
27 SG is concerned that the funds advanced by SG to Forum Finance and transferred into FGFS may have been further transferred from FGFS to other companies related to Forum Finance and/or Mr Papas.

28 SG supports Mr Ireland, Mr Preston and Ms Sozou of McGrathNicol being appointed over all such companies to facilitate the efficient and effective investigation of the whereabouts of relevant funds and/or any transactions to acquire assets using those funds.

SWORN by the deponent)
at SYDNEY)
in New South Wales)
on 14 July 2021)
Before me:)



Signature of deponent



Signature of witness

Matthew Youssef
Solicitor
Level 11, 5 Martin Place, Sydney NSW 2000

This document was signed in counterpart and witnessed over audio visual link in accordance with section 14G of the Electronic Transactions Act 2000 (NSW).