

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 15/07/2021 12:31:49 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: 15/07/2021 12:46:56 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.

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 and others named in the Schedule

Applicants

FORUM FINANCE PTY LIMITED and others named in the Schedule

Respondents

Affidavit of: **Domenico Alessandro Calabretta**
Address: Level 2, 10 Bridge Street, Sydney NSW 2000
Occupation: Registered Liquidator
Date: 15 July 2021

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I, Domenico Alessandro Calabretta of Level 2, 10 Bridge Street, Sydney NSW 2000, Registered Liquidator affirm:

1. I am the Chief Executive Officer of Mackay Goodwin and a Registered Liquidator.

Filed on behalf of (name & role of party) Forum Group Pty Ltd ACN 153 336 997 (Receivers Appointed)
 (Administrators Appointed), the proposed Fifth Respondent

Prepared by (name of person/lawyer) Luke Whiffen

Law firm (if applicable) Hilton Bradley Lawyers

Tel 1300 240 319 Fax _____

Email luke@hiltonbradley.com.au

Address for service Suite 1101, Level 11, 99 York Street, Sydney NSW 2000
 (Include state and postcode)

[Version 3 form approved 02/05/2019]

2. I have over 21 years' experience undertaking complex administrations, liquidations and receiverships. Mr Grahame Ward and Mr Thyge Trafford-Jones have each respectively over 25 and 18 years' experience undertaking complex administrations, liquidations and receiverships. The Administrators are employed by Mackay Goodwin. In last 3 years Mackay Goodwin been placed in the top 5 insolvency and reconstruction firms for most appointments, such appointments including multinational and listed entities.
3. I believe that the information contained in this affidavit is true.
4. Exhibited to me at the time of affirming this affidavit is an electronic bundle of documents referred to in my affidavit and marked "DC-1". Where I refer to a document by page number noting Exhibit DC-1, I am referring to the corresponding page number in Exhibit DC-1 where the document is located.

Background

5. On 8 July 2021 I, along with Grahame Ward and Thyge Trafford-Jones, (together the Administrators) were, and pursuant to a resolution under section 436A of the *Corporations Act 2001 (Act)*, appointed administrators of the group of companies set out in the Schedule appearing at page 1 of DC-1 (**Forum Group Companies**).
6. I am authorised to swear this affidavit on behalf of the Administrators.
7. The first meeting of creditors for each of the Forum Group Companies is to be held at 10:00 am on Tuesday, 20 July 2021 (**First Creditors Meeting**).
8. Mackay Goodwin have offices and 41 staff in Sydney, Melbourne and Brisbane and have engaged an agent in Perth to deal with any issues that arise in relation to the administration of the Forum Group Companies in Western Australia. In relation to the two New Zealand entities in the group, the Administrators have engaged Rodgers Reidy, an insolvency firm, to assist in relation to the administration of those two entities. The Administrators have engaged Nexia Accounting Group, who are part of Nexia International Group and around 8th largest network in the world, who have expertise and offices in all jurisdictions in which the Forum Group is exposed to, to assist my office with recoveries and investigations.
9. Further, and in any event, the principal place of business of the majority of the Forum Group of Companies is in Sydney.
10. The Forum Group of Companies includes the proposed fourth to seventh respondents in these proceedings being:
 - a. Forum Enviro Pty Ltd (Administrators Appointed) ACN 168 709 840;
 - b. Forum Group Financial Services Pty Ltd (Administrators Appointed) ACN 623 003 705;
 - c. Forum Group Pty Ltd (Administrators Appointed)(Receivers Appointed) ACN 153 336 997; and
 - d. Forum Enviro (Aust) Pty Ltd (Administrators Appointed) ACN 607 484 364

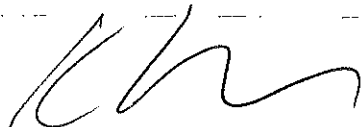
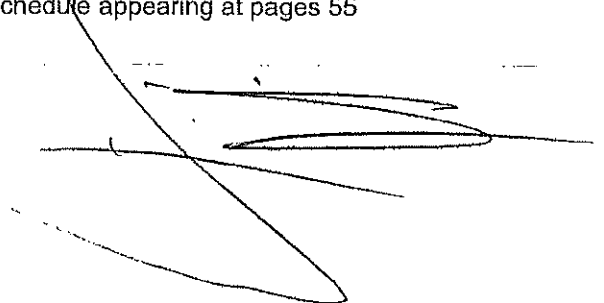



(together the **Respondent Companies**)

11. Based on the Administrators' investigations to date it appears the Respondent Companies carry on the following businesses:
- a. Forum Enviro Pty Ltd (Administrators Appointed): Sold environmental products including voltage optimisers and food waste digestors. The business of this Company ceased trading in January 2020 following a sale of business to Iugis Holdings Limited (UAE based entity), at which time employees were also transferred at that time to Iugis Pty Ltd. The company has cash at bank of \$39,660.01 and debtors totalling at least \$88,957.62.
 - b. Forum Enviro (Aust) Pty Ltd: Our investigation to date has not been able to determine the purpose/business of this entity. The company has cash at bank of \$23,249.72.
 - c. Forum Group Pty Ltd: Managed IT & Print Services, Cloud & Managed IT, Asset Tracking, Business Process Automation. The company has cash at bank of \$3,097,544.91, debtors totalling \$ 4,676,106.11, stock with an estimated value of approximately \$4,898,708.04 and equipment with an estimated value of \$160,000.
 - d. Forum Group Financial Services Pty Ltd: It is unclear whether this entity operated a business. The company has cash at bank of \$570,142.80 and is the owner of two properties that are awaiting valuation and subject to mortgages.
12. Based on the Administrators' investigations to date, unsecured creditors for the Respondent Companies, excluding any claim from Westpac and employees, are estimated as follows:
- a. Forum Enviro Pty Ltd (Administrators Appointed) ACN 168 709 840 - \$74,711 (2 creditors)
 - b. Forum Group Financial Services Pty Ltd (Administrators Appointed) ACN 623 003 705 - unknown
 - c. Forum Group Pty Ltd (Receivers Appointed) (Administrators Appointed) ACN 153 336 997 - \$3,691,916 (137 creditors)
 - d. Forum Enviro (Aust) Pty Ltd (Administrators Appointed) ACN 607 484 364 - \$2,144,693 (2 creditors)
13. My investigations disclose that Forum Group Pty Ltd (Receivers Appointed) (Administrators Appointed) employs approximately 130 staff.
14. At pages 2 to 54 of the Exhibit DC-1 is a bundle of correspondence between my lawyers and the lawyers for the Applicant.

Work Undertaken Since Commencement of Administration

15. Since the commencement of the administration of the Forum Group of Companies, the Administrators have undertaken the tasks set out in the Schedule appearing at pages 55 to 62 of the Exhibit DC-1.

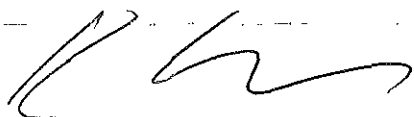



Proposed Replacement of Administrators of the Forum Group of Companies

16. I have been put on notice by the lawyers acting for the Applicant that they will propose resolutions at the First Creditors Meeting that they replace the Administrators as administrators of Forum Group of Companies, which include the Respondent Companies. The Administrators do not object to the Applicant proposing such resolutions. Consistent with s 436E(4) of the Act, it is a course that enables the creditors to decide who is to be appointed as the administrators of the company.
17. In view of the Applicant's proposal to propose resolutions at the First Creditors Meeting replacing the Administrators, it is my position that the hearing of the Applicant's interlocutory application seeking the appointment of provisional liquidators to the Respondent Companies should not proceed. Rather, it should be adjourned until after the First Creditors Meeting. The Applicant's interlocutory application may be rendered unnecessary by the outcome of the resolutions to be proposed by them at the meeting.

Perseveration of Assets

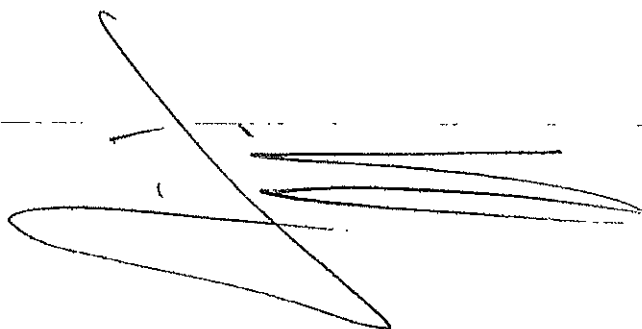
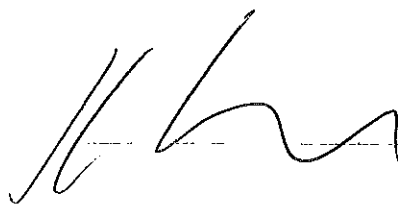
18. The objects of an administration conducted under Part 5.3A of the Act are to preserve and salvage as much of the business of the company as possible and otherwise to take steps that will maximise the return to creditors of the company. The Administrators are obliged to achieve such objects and as such there should be no fear held by any interested party that any assets, including assets to which they may have a proprietary interest, will be dissipated.
19. Further, an immediate winding up may be antithetical to the statutory objects. The Administrators are currently investigating the affairs of the Forum Group of Companies including exploring options for the sale of the legitimate business operated by some or all of the Forum Group of Companies and are in discussions with several interested parties. Exploring a sale of business as a going concern is in the interests of employees and creditors (including the Applicant) as it is likely to preserve the continuity of the employment of possibly more than one hundred employees, maximise the price at which the assets of the companies may be realised (for example, by preserving existing contacts and customers) and, importantly, avoid the crystallisation of further liabilities such as employee entitlements arising on a winding up (for example, deemed redundancy payments).
20. As part of our investigation of the affairs of the Forum Group of Companies, we shall thoroughly investigate the sources of funds paid to the companies, including the receipt of any funds paid to the companies fraudulently, as well as the disbursements of funds by the companies, again, including fraudulently. This process has begun, is ongoing and will take considerable time to complete. I wholly reject any suggestion, by or behalf of Westpac or anyone else, that:
- a) the Administrators not independent;
 - b) the Administrators are not inclined to undertake such necessary and appropriate investigations;
 - c) the Administrators do not have sufficient resources to undertake the requisite investigations; and



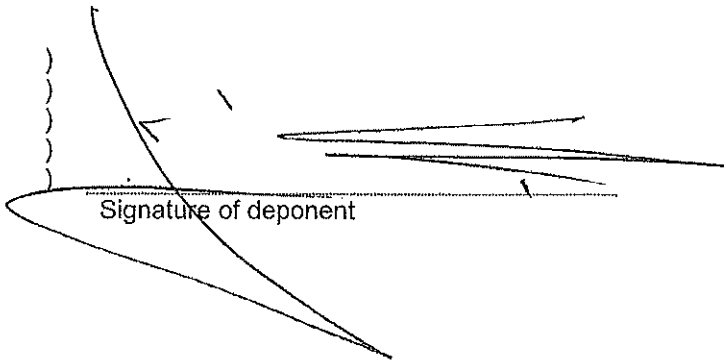
- d) the Administrators do not have sufficient experience and expertise to undertake the investigations.

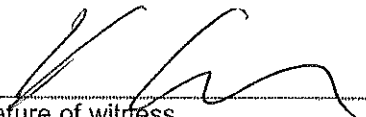
Evidence to be filed in Substantive Application

21. In order to meet the Applicant's application to appoint provisional liquidators to the Respondent Companies, the Administrators wish to file evidence relevant to the issue of whether it is in the interests of the Respondent Companies' creditors for them to continue under administration rather than have a provisional liquidator appointed. Such evidence will include evidence as to:
- a. The ongoing operations of the Forum Group of Companies and the extent to which their business operations are interlinked;
 - b. The Administrators' progress towards sale of businesses operated by the Forum Group of Companies and the effect of the appointment of a provisional liquidator to the Respondent Companies on the sale of such businesses including:
 - i. The likely employee entitlements that will crystallise as liabilities of the Forum Group Companies, or some of them, if liquidators are appointed to the Respondent Companies. We estimate these entitlements may be \$3.9 million; and
 - ii. Whether appointment of liquidators to the Respondent Companies means that other interrelated business will not be able to be sold or would suffer significant prejudice to their value.
 - c. The efficiencies of having a single administrator for each of the Forum Group of Companies compared with provisional liquidators being appointed to the 4 Respondent Companies with the remaining 24 Forum Group Companies under the control of the Administrators..
22. In event the Administrators remain the administrators of the Respondent Companies, or any of them, following the First Creditors Meeting, and Westpac presses its application in its current form, I will wish to prepare evidence opposing the application and I request until the 5:00 pm next Friday, 23 July 2021 for that purpose.



Affirmed by the deponent
at Sydney
in New South Wales
on 15th July 2021
Before me:


Signature of deponent


Signature of witness
Kieran Kelly
Hilton Bradley Lawyers
Solicitor
Level 11, 99 York Street
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 confirmed the deponent's identity using the following identification document:~~

6. I have known the deponent for more than 12 months

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

Schedule of Parties

No. NSD616 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
Third Respondent: Vincenzo Frank Tesoriero