

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



Sia Lagos

Dated: 30/09/2021 11:07:18 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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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 (In Liquidation) ACN 153 301 172 and others

Respondents

Affidavit of: **Jason Ireland**

Address: Level 12, 20 Martin Place, Sydney NSW 2000

Occupation: Registered Liquidators

Date: 29 September 2021

I, Jason Ireland, of Level 12, 20 Martin Place, Sydney NSW 2000, Registered Liquidator, affirm:

1. I am a Partner in the Restructuring practice of McGrathNicol, a Chartered Accountant (admitted as a member of the Chartered Accountants Australia and New Zealand) and a Registered Liquidator.
2. I have over 20 years' experience undertaking complex restructuring and turnaround assignments, capital reorganisations and formal insolvency administrations.
3. I believe that the information contained in this affidavit is true.
4. This affidavit is made in connection with the Applicants' application for orders that, among other things, Jason Preston and I of McGrathNicol be appointed as joint and several liquidators to:

<p>Filed on behalf of (name & role of party)</p> <p>Prepared by (name of person/lawyer)</p> <p>Law firm (if applicable)</p> <p>Tel</p> <p>Email</p> <p>Address for service (include state and postcode)</p>	<p>Jason Preston and Jason Ireland as provisional liquidators of Forum Forum Group Financial Services Pty Ltd (in provisional liquidation), Forum Enviro Pty Ltd (in provisional liquidation) and Forum Enviro (Aust) Pty Ltd (in provisional liquidation)</p> <hr/> <p>Chris Prestwich</p> <p>Allens</p> <p>02 9230 4000</p> <p>Chris.Prestwich@allens.com.au</p> <p>Deutsche Bank Place, 126 Phillip Street, Sydney NSW 2000 Email: Chris.Prestwich@allens.com.au and Kirsty.Prinsloo@allens.com.au DX: 105 Sydney</p>
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- (a) the Fourth Respondent, Forum Group Financial Services Pty Ltd (provisional liquidators appointed) ACN 623 033 705 (**FGFS**);
 - (b) the Sixth Respondent, Forum Enviro Pty Ltd (provisional liquidators appointed) ACN 168 709 840 (**FE**); and
 - (c) the Seventh Respondent, Forum Enviro (Aust) Pty Ltd (provisional liquidators appointed) ACN 607 484 364 (**FEA**),
- (together referred to as the **PL Entities**).

5. I refer to my earlier affidavit in this proceeding affirmed 13 July 2021 (**Earlier Affidavit**) made in support of an application seeking orders that Jason Preston and I be appointed as either provisional liquidators or joint and several liquidators to the PL Entities. Terms defined in my Earlier Affidavit have the same meaning in this affidavit, unless specified otherwise.
6. Exhibited to me at the time of affirming this affidavit is an electronic bundle of documents referred to in my affidavit and marked "**J1-2**". Where I refer to a document by page number noting Exhibit J1-2, I am referring to the corresponding page number in Exhibit J1-2 where the document is located.

Background

7. Following the application referred to in paragraph 5 above, by orders of this Court on 15 July 2021, Jason Preston and I were appointed joint and several provisional liquidators of the PL Entities.
8. At pages 1 to 7 to J1-2 is a copy of a current and historical company extract for FGFS.
9. At pages 8 to 16 of J1-2 is a copy of a current and historical company extract for FE.
10. At pages 17 to 22 of J1-2 is a copy of a current and historical company extract for FEA.
11. Additionally, Jason Preston and I are currently the joint and several liquidators of the following entities:
- (a) the First Respondent, Forum Finance Pty Limited (in liquidation) ACN 153 301 172 (**FF**);
 - (b) the Fifth Respondent, Forum Group Pty Ltd (Receivers Appointed) (in liquidation) ACN 153 336 997 (**FG**);
 - (c) the Ninth Respondent, 14 James Street Pty Ltd (in liquidation) ACN 638 449 206;

- (d) the Tenth Respondent, 26 Edmonstone Road Pty Ltd (in liquidation) ACN 622 944 129;
 - (e) the Eleventh Respondent, 5 Bulkara Street Pty Ltd (in liquidation) ACN 630 982 160;
 - (f) the Twelfth Respondent, 6 Bulkara Street Pty Ltd (in liquidation) ACN 639 734 473;
 - (g) the Thirtieth Respondent, The Forum Group of Companies Pty Ltd (in liquidation) ACN 151 964 626;
 - (h) the Thirty-First Respondent, Iugis Pty Ltd (in liquidation) ACN 632 882 243;
 - (i) the Thirty-Sixth Respondent, Spartan Consulting Group Pty Ltd (in liquidation) ACN 168 989 544; and
 - (j) the Thirty-Seventh Respondent, Intrashield Pty Ltd (in liquidation) ACN 133 426 534.
12. In this affidavit, I refer to the First, Fifth and Thirtieth Respondents, together with FE and FEA, as the **Forum Group**.
13. In the judgment delivered in respect of the Liquidators' appointment to FF (at pages 23 to 43 of Exhibit JI-2), the Court observed:
- The position that emerges from the affidavit material and accompanying documents is alarming. It is not an overstatement to remark that it appears Forum Finance has, by some means or another, been involved in a long-running, calculated and elaborate fraud ranking high in the catalogue of corporate misfeasance.*
14. Based on the investigations conducted by the Liquidators to date, the fraud (**Fraud**) appears to have generally involved:
- (a) FF and other Forum Group entities obtaining funds from a number of financiers, including the Applicant, for the purchase or assignment of rights, title and/or interest in respect of equipment leases or other contracts which one or more of the Forum Group entities were purportedly party to with various third-party lessees. From the Liquidators' investigations conducted to date, a sum in excess of \$400 million was obtained from financiers;
 - (b) In the majority of instances, the equipment, the equipment leases and/or other contracts pursuant to which funds were advanced by financiers did not exist, were financed by multiple financiers (where existing financing arrangements

were not disclosed to subsequent financiers), were fraudulent, or did not provide the rights, title and/or interest represented to the financiers and the funds obtained in respect of those equipment leases or other contracts were not applied in the manner represented.

- (c) The majority of the funds obtained pursuant to the Fraud were transferred to FGFS without consideration and without any legitimate contractual arrangements in place.
- (d) FGFS is not part of the Forum Group and was not included in the group's consolidated audited financial accounts. It appears that, since January 2018, approximately:
 - (i) \$291,355,723 was transferred from FF to FGFS;
 - (ii) \$24,660,517 was transferred from FE to FGFS; and
 - (iii) \$84,896,413 was transferred from FEA to FGFS.
- (e) Those monies were transferred from FGFS to a number of other Forum Group entities, to related parties and to various third parties (in the majority of cases at the direction of Mr Papas). In many instances, to date, the Liquidators have not been able to confirm the identity of the transferee as that information is not clear in the bank statements and or does not match the financial records that the Liquidators have seen.

15. In order to locate the misappropriated funds or assets purchased with the misappropriated funds, a detailed tracing exercise is currently being undertaken by the Liquidators' forensic team. This exercise involves:

- (a) analysing the books and records of FGFS, including management accounts, accounting records and bank statements;
- (b) analysing the descriptions given for certain transactions in the bank statements of FGFS and attempting to reconcile those descriptions with accounting records;
- (c) analysing the books and records of other Forum Group entities;
- (d) tracing the flow of funds:
 - (i) from FF, FE, FEA and other related parties of FGFS;
 - (ii) from FGFS:
 - (A) to related parties;

- (B) to other Forum Group entities;
 - (C) to parties in apparent consideration for assets; and
 - (D) other unknown destinations;
- (iii) from other Forum Group entities:
- (A) to related parties;
 - (B) to other Respondents;
 - (C) to purchase assets; and
 - (D) other unknown destinations.

16. Based on the tracing exercise and investigations conducted to date, it is sufficiently apparent to the Liquidators that:
- (a) numerous assets have been located which have been purchased using (wholly or in part) misappropriated funds, or with funds obtained from third parties in apparent exchange for assets, or security over assets, purchased using (wholly or in part) misappropriated funds. These assets include real property, a football club, a range of high performance motor vehicles, vessels, shares and interests in a racing horse;
 - (b) the assets acquired were typically held in the name of Mr Papas, Mr Tesoriero and/or companies that were ultimately owned in whole or part by Mr Papas and/or Mr Tesoriero and/or trusts that were controlled by Mr Papas and/or Mr Tesoriero and/or had beneficiaries which included Mr Papas and/or Mr Tesoriero, and/or relatives of Mr Papas and/or Mr Tesoriero, and/or companies owned by Mr Papas and/or Mr Tesoriero;
 - (c) a large sum of money (in excess of \$55m) has been transferred overseas to related entities of Mr Papas in Greece, the United Kingdom and the United Arab Emirates. Some of those transfers appear to have occurred in connection with loss making business ventures being pursued by Mr Papas and others were for the acquisition of assets in the name of entities associated with Mr Papas;
 - (d) amounts of money were transferred to other entities and characterised as loans, however the terms of those loans appear uncommercial;
 - (e) while FGFS has the benefit of a number of intercompany loans on its balance sheet as a result of those overseas transfers, it is likely that many of those will not be recoverable in full; and

- (f) payments of money in the order of around \$50,000 per month were made by FGFS to entities associated with each of Mr Papas and Mr Tesoriero for various periods of time which were recorded as having been paid for consulting services, however there is no proof that FGFS received any consulting services during the respective periods.

Status of the PL Entities

FGFS

17. As described above, while very substantial sums of money were paid into FGFS, those sums were paid onto other entities both within and outside the Forum Group with minimal cash being retained in the accounts of FGFS.
18. I have reviewed the balance sheet of FGFS as at 30 June 2021 which records the following:
- (a) the net asset position is recorded as (\$13,885,913.17) (i.e. a negative amount);
 - (b) the total asset position is recorded as \$272,366,448.29, however the vast majority of this amount comprises :
 - (i) non-current receivables recorded in respect of funds received from the Forum Group and paid to related parties or third parties; or
 - (ii) clearing accounts which are merely accounts relating to payments made in respect of leases related to equipment that either did not exist or had not been leased; and
 - (c) the total liability position is recorded as \$286,252,361.46, noting that proofs of debt have not been called for and only one related party creditor has submitted a proof of debt for approximately \$55 million.
19. Based on the Liquidators' investigations to date, in my view:
- (a) FGFS has not operated a legitimate business. Its primary function was to receive monies from FF, FG, FE and FEA which had been improperly obtained by those entities and to pay those monies in the manner described above; and
 - (b) FGFS does not have sufficient assets to discharge its liabilities. While the balance sheet records an asset position of over \$272 million, in my view only a small portion of those assets are capable of recovery. As at the date of this affidavit, FGFS has less than \$600,000 in its bank account.

20. In relation to FGFS's cash position, in mid-June 2021, in the weeks leading up to the appointment of the voluntary administrators to FGFS, approximately \$2 million was transferred (in two tranches each of approximately one million dollars) out of FGFS's bank account to Mr Papas's company in Greece, Mazcon Investments Hellas IKE. The payments were authorised by Mr Moussa (Tony) Bouchahine, the Chief Financial Officer, at the direction of Mr Papas. These funds comprised virtually all of FGFS's cash at bank at the time of the transfers, leaving less than \$10,000 in FGFS's bank account. The Liquidators have not been able to identify any legitimate purpose for the transfer of these funds.
21. The Liquidators have also identified the following assets which are currently held in Mr Papas's name and were acquired using FGFS's funds for no apparent consideration from Mr Papas (and therefore would likely constitute voidable transactions if FGFS were wound up):
- (a) BRP SeaDoo Jet Ski (grey) registration no. AKI185N (VIN/ HIN CAYDV01168H819), acquired for \$18,000 in August 2020; and
 - (b) Grady White Freedom 325 Boat registration no. AKP564N (VIN/HIN NTLNF702F02), acquired for \$616,462 in mid-2020.

FE

22. I have reviewed the balance sheet of FE as at 30 June 2021 which records the following:
- (a) the net asset position is recorded as (\$18,546,299.76) (i.e. a negative amount);
 - (b) the gross asset position is recorded as \$1,841,636.68, however approximately \$1.2 million of this amount comprises a loan to FF which is also in liquidation;
 - (c) the gross liability position is recorded as (\$20,387,936.44), noting no proofs of debt have been called for or received to date;
23. Based on the Liquidators' investigations to date, in my view, FE does not have sufficient assets to discharge its liabilities. While the balance sheet records an asset position of \$1,841,636.68, in my view only a small portion of those assets (if any) are capable of recovery. As at 30 June 2021, FE had approximately \$40,000 in its bank account.

FEA

24. I have reviewed the balance sheet of FEA as at 30 June 2021 which records the following:

- (a) the net asset position is recorded as (\$1,017,587.27) (i.e. a negative amount);
 - (b) the gross asset position is recorded as \$12,558,596.55, however approximately \$9.2 million of this amount comprises trade debtors recorded in respect of contracts that may not relate to any legitimate customer and \$0.9 million relates to GST paid that would be offset against GST collected;
 - (c) the gross liability position is recorded as (\$13,576,183.82), noting that while no proofs of debt have been called for, the Australian Taxation Office has lodged a proof of debt for \$359,640.00; and
 - (d) based on the Liquidators' tracing exercise to date, it appears that the assets and liabilities do not record significant sums (in excess of \$84 million) transferred from FEA to FGFS.
25. Based on the Liquidators' investigations to date, in my view, FE does not have sufficient assets to discharge its liabilities. While the balance sheet records an asset position of \$12,558,596.55, in my view only a small portion of those assets (if any) are capable of recovery. As at 30 June 2021, FE had less than \$25,000 in its bank account.

Factors relevant to winding up of the PL Entities

26. As to whether the PL Entities should be wound up, I note the following:
- (a) the Liquidators are already appointed to the Forum Group entities;
 - (b) each of the PL Entities has been involved in the Fraud outlined at paragraphs 13 to 16 above and the dissipation of funds obtained from the financiers to related parties and other third parties;
 - (c) without the Fraud, the PL Entities have likely been insolvent for some time;
 - (d) the sole director of each company, Mr Papas, is presently the subject of ongoing investigations by the Liquidators in connection with the Fraud, he has left the jurisdiction and it is unclear whether he intends to return and there is presently no prospect of control of the companies being returned to him or any other persons nominated by the shareholders (Mr Papas and Mr Tesoriero are the shareholders of FGFS, and entities in the Forum Group are the shareholders of FE and FEA);
 - (e) FGFS and FE are plainly insolvent and there will be a significant shortfall to creditors without recoveries being pursued in a liquidation. Further, FGFS, FE and FEA are each exposed to significant liabilities by virtue of their

involvement in the Fraud and their role in the dissipation of misappropriated funds;

- (f) based on the information available to the Liquidators, there is no prospect of the companies returning to a solvent position;
- (g) the PL Entities do not have any ongoing business or capacity to carry on a going concern; and
- (h) a key asset that may be available to each company is any recoveries from voidable and related party transactions that may be pursued by the Liquidators, if appointed. I consider that such claims, in addition to any proprietary claims that may be pursued to recover the misappropriated funds, will offer the best chance of maximising any returns to creditors.

Contact with Mr Papas

27. Since my appointment in respect of the Forum Group, I have sent emails to Mr Papas and received emails from Mr Papas at the email address billpapas07@gmail.com. The last email I received from Mr Papas at this email address was on 16 September 2021.

Affirmed by the abovenamed deponent
at Sydney, New South Wales on
29 September 2021
Before me:

Jason Ireland

Signature of deponent

Alexei Goroutsov

Signature of witness

Witnessed by audio visual link in accordance with
s 14G of the Electronic Transactions Act 2000 (NSW)