

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 1/07/2021 2:01:39 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: Concise Statement
File Number: NSD642/2021
File Title: SOCIETE GENERALE (ABN 71 092 516 286) v FORUM FINANCE PTY LIMITED (ACN 152 301 172) & ANOR
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



Sia Lagos

Dated: 1/07/2021 2:55:19 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.



Concise Statement

No. of 2021

Federal Court of Australia
 District Registry: New South Wales
 Division: Commercial and Corporations

Societe Generale (ABN 71 092 516 286)

Applicant

Forum Finance Pty Limited (ACN 153 301 172) and another
 Respondents

A The important facts giving rise to the claim

1. The proceeding concerns certain payments that were made by the applicant (**SG**) to the first respondent (**Forum Finance**). The second respondent (**Mr Papas**) is the CEO, director and secretary of Forum Finance.
2. On 6 November 2020, the applicant entered into a Receivables Acquisition and Servicing Agreement (**Master Agreement**) with Forum Finance and EQWE Pty Ltd (**EQWE**).
3. The Master Agreement governs the commercial arrangement in which Forum Finance could sell, and SG could purchase, "Offered Receivables" that an "Obligor" (being Veolia Environmental Services (Australia) Pty Ltd (ACN 051 316 584) (**Veolia**) or any other company or legal entity agreed by SG and Forum Finance) may from time to time owe to Forum Finance. The relevant receivables were derived from the provision of "waste digesters" to Veolia. The Master Agreement also appointed EQWE as agent of SG and Forum Finance to enforce their rights in and under the Accepted Receivables (clause 10.1) and included particular obligations on EQWE (in addition to Servicing Guidelines that were entered into between EQWE and SG) in respect of its role as the party servicing the arrangement between SG and Forum Finance including, for example, facilitating payments to be made by Forum Finance to SG and other matters.

Filed on behalf of (name & role of party)	Societe Generale (ABN 71 092 516 286), Applicant		
Prepared by (name of person/lawyer)	Ian Timothy Bolster / Matthew Youssef		
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First Offer Notice

4. On 3 March 2021, SG received an "Offer Notice" from Forum Finance (**First Offer Notice**), through EQWE, offering to sell the receivables that were purportedly to be paid by Veolia pursuant to a Payment Schedule for the supply of a number of Organic Waste Digesters under a purported agreement between Forum Finance and Veolia dated 1 March 2021. It also attached a document titled "Certificate of Acceptance of Delivery" which was purportedly signed by Veolia. The purchase price to be paid by SG to Forum Finance under the First Offer Notice was \$4,128,757 (net of a "Receivable Retention Amount" that SG was entitled to retain). SG made that payment on 9 March 2021.
5. On 9 March 2021, SG received a Verification Statement for a registration made by Forum Finance against Veolia on the Personal Property Securities Register (PPSR) in respect of the purported goods listed in the above Payment Schedule.
6. On 12 March 2021, SG received a document titled "Notice of Assignment", through EQWE, that had purportedly been issued by Forum Finance to Veolia dated 8 March 2021, and which contained a statement to the effect it had been "acknowledged" for and on behalf of Veolia. It was also signed by Mr Papas for and on behalf of Forum Finance.
7. EQWE was provided with the above Payment Schedule, First Offer Notice and Notice of Assignment by email from Mr Papas, and from Mr Papas' Executive Assistant (copied to Mr Papas), to EQWE.
8. Forum Finance subsequently made payments to SG totalling \$252,000 in respect of that First Offer Notice.

Second Offer Notice

9. On 3 May 2021, SG received another "Offer Notice" from Forum Finance (**Second Offer Notice**), through EQWE, offering to sell the receivables that were purportedly to be paid by Veolia pursuant to a Payment Schedule for the supply of a number of Organic Waste Digesters under a purported agreement between Forum Finance and Veolia dated 28 April 2021. It also attached a document titled "Certificate of Acceptance of Delivery" which was purportedly signed by Veolia. The purchase price to be paid by SG to Forum Finance under the Second Offer Notice was \$2,299,539 (net of a "Receivable Retention Amount" that SG was entitled to retain). SG made that payment on 6 May 2021.
10. Also on 6 May 2021, SG received: (a) a document titled "Notice of Assignment", through EQWE, that had purportedly been issued by Forum Finance to Veolia dated 6 May 2021, and which contained a statement to the effect it had been "acknowledged" for and on behalf of Veolia. It was also signed by Mr Papas for and on behalf of Forum Finance; and (b) a

Verification Statement for a registration made by Forum Finance against Veolia on the PPSR in respect of the purported goods listed in the above Payment Schedule.

11. EQWE was provided with the above Payment Schedule, Second Offer Notice and Notice of Assignment by email from Mr Papas' Executive Assistant (copied to Mr Papas) to EQWE.
12. Forum Finance subsequently paid SG \$46,800 in respect of that Second Offer Notice.

Third Offer Notice

13. On 18 May 2021, SG received another "Offer Notice" from Forum Finance (**Third Offer Notice**), through EQWE, offering to sell the receivables that were purportedly to be paid by Veolia pursuant to a Payment Schedule for the supply of a number of Organic Waste Digesters under a purported agreement between Forum Finance and Veolia dated 14 May 2021. The purchase price to be paid by SG to Forum Finance under the Third Offer Notice was \$2,558,902 (net of a "Receivable Retention Amount" that SG was entitled to retain). SG made that payment on 24 May 2021.
14. On 19 May 2021, SG received a Verification Statement for a registration made by Forum Finance against Veolia on the PPSR in respect of the purported goods listed in the above Payment Schedule.
15. On 20 May 2021, SG received a document titled "Notice of Assignment", through EQWE, that had purportedly been issued by Forum Finance to Veolia dated 24 May 2021, and which contained a statement to the effect it had been "acknowledged" for and on behalf of Veolia. It was also signed by Mr Papas for and on behalf of Forum Finance.
16. EQWE was provided with the above Payment Schedule, Third Offer Notice and Notice of Assignment by email from Mr Papas, and from Mr Papas' Executive Assistant (copied to Mr Papas), to EQWE.
17. Forum Finance did not pay any money to SG in respect of the Third Offer Notice.

The purported receivables that were sold to SG do not exist

18. The purported receivables between Veolia and Forum Finance that are the subject of the three Offer Notices, Payment Schedules and Notices of Assignment do not exist. The purported signatures of the Veolia executive on the documents given by Forum Finance to SG in order to obtain the finance were not made by the person whose name appears under them. The purported goods that were being supplied to Veolia and that are the subject of the purported receivables were never acquired or received by Veolia.

B. The relief sought from the Court

19. The relief sought by the applicant is set out in the accompanying Originating Application.

20. SG seeks a declaration that the amount that it has paid to Forum Finance (less the amounts that it has since received) are held on trust for SG.
21. SG also seeks damages against Forum Finance and Mr Papas pursuant to section 236 of the *Australian Consumer Law* for contravening section 18 of the *Australian Consumer Law*, and the tort of deceit (i.e. common law fraud).

C. The primary legal grounds for the relief sought

22. SG was induced into making the payments referred to above based on a state of affairs that was not true, namely, that:
 - a. certain receivables were owing by Veolia to Forum Finance;
 - b. signatures of the Veolia executive on the documents given by Forum Finance to SG in order to obtain the finance were made by the person whose name appears under them;
 - c. goods that were the subject of the purported receivables were acquired or received by Veolia.
23. By preparing and disseminating the documents referred to in paragraphs 4, 5, 9, 10, 13 and 14 above in the circumstances in paragraph 22 above, Forum Finance and Mr Papas engaged in conduct in trade or commerce that represented to SG that Veolia had entered into contracts under which: (a) certain goods were delivered or made available to Veolia; and (b) Veolia owed certain amounts to Forum Finance. That conduct was misleading or deceptive to SG, or likely to mislead or deceive SG, in contravention of section 18 of the *Australian Consumer Law*.
24. Forum Finance and Mr Papas also made representations with knowledge they were false and with the intention that SG act on them, which caused SG loss. That conduct constitutes common law fraud (i.e. the fraud of deceit).
25. SG was induced into making the payments as a result of fraud or mistake, and is therefore entitled to restitution for money had and received (unjust enrichment).

D. The alleged harm suffered by the applicant

26. SG has suffered harm and loss, being the amounts paid by SG to Forum Finance in respect of the First Offer Notice, Second Offer Notice and Third Offer Notice, less amounts received, being the net amount of \$8,688,398, plus interest.

Certificate of lawyer

I Ian Timothy Bolster certify to the Court that, in relation to the concise statement filed on behalf of the Applicant, the factual and legal material available to me at present provides a proper basis for each allegation in the concise statement.

Date: 1 July 2021



Signed by Ian Timothy Bolster

Lawyer for the Applicant