

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

Societe Generale (ABN 71 092 516 286)

Applicant

Forum Finance Pty Limited (ACN 153 301 172)

First Respondent

AND

Basile Papadimitriou (also known as Bill Papas)

Second Respondent

Applicant's short outline of submissions

1. The matter is before the Court today in relation to an Interlocutory Application filed 27 July 2021 (Tab 7).
2. The application seeks relief in the form of leave being granted to proceed against the first respondent and a proposed third respondent (both of which are in liquidation) as well as to file an amended originating application. A proposed statement of claim has also been prepared and served yesterday on the respondents and the proposed third respondent.
3. Other than the granting of leave the orders are uncontroversial and procedural.

Granting of leave

4. Pursuant section 471B of the *Corporations Act 2001* (Cth), when a company is being wound up in insolvency or by the court a person cannot begin or proceed with a proceeding in a court against the company or in relation to property of the company except with the leave of the Court and in accordance with such terms (if any) as the Court imposes.
5. The ordinary reasoning for requiring leave to be granted is to protect the company from a multiplicity of actions which would be both expensive and time consuming, as well as in some cases unnecessary.
6. That ordinary reasoning does not apply in the present circumstances, and there are good reasons to give leave.
7. The principle reason in support of granting leave is that part of the claim brought by the applicant against the first respondent and the proposed third respondent is proprietary in nature and such a claim is outside the premise of the proof of debt system. Consequently, leave is

ordinarily given in such circumstances (see *QBE Insurance (International) Ltd v Cycand Pty Ltd* [2009] NSWSC 1177; *Ong v Lottwo Pty Ltd (In liq)* [2013] SASCFC 57 [61]).

8. It is accepted that the above is not conclusive of the issue, and the Court must still be satisfied that there is a serious question to be tried. However, there can be no doubt that the Court can be satisfied that there is a serious question to be tried. The evidence led to date reveals that:
 - (a) \$4,128,757 was paid by the applicant into the first respondent's account on about 9 March 2021 (see [13] of the affidavit of Mr Thong (Tab 19 at CB321);
 - (b) \$2,299,539 was paid by the applicant into the first respondent's account on 6 May 2021 (see [23] of the affidavit of Mr Thong at CB323);
 - (c) \$2,558,902 was paid by the applicant into the first respondent's account on or about 24 May 2021 (see [35] of the affidavit of Mr Thong at CB326).
 - (d) the above sums of money were obtained improperly (see [11] to [14] of the affidavit of Gurpreet Brar dated 21 July 2021 (Tab 10 at CB344);
 - (e) such monies made their way into the bank accounts of the first respondent and proposed third respondent (see the bank statements located behind tabs 13 and 14, especially, entries on 9 March 2021 (CB1401 and CB1412), 7 May 2021 (CB1404 and CB1421) and 24 May 2021 (CB1404 and CB1424).

9. The following reasons also support an order granting leave:
 - (a) *First*, the amount claimed is not insignificant. It is more than \$8,000,000;
 - (b) *Secondly*, the claim is premised on serious allegations. It is not an ordinary creditor claim.
 - (c) *Thirdly*, the underlying issues will be litigated in any event given the second respondent's role on both entities. As a consequence, there is a risk of satellite litigation on the same facts if the liquidators are required to consider the same issues in respect of any proof of debt;
 - (d) *Fourthly*, it cannot be said that the liquidator would be unduly distracted by the proceedings. The liquidators will need to spend time considering the issues raised in any event;
 - (e) *Fifthly*, the liquidators will need to spend money considering the claims as part of a proof of debt. It is accepted that a defence to a statement of claim requires a bit more precision, but it does not seem likely that a lot more than what would be required under the proof of debt process will be necessary. Indeed, it is unclear as to what defence will even be proffered. As things presently stand none seems available;

- (f) *Sixthly, the liquidators have previously consented to Westpac obtaining leave to proceed, for a claim that appears far more complex than Societe Generale's claim, which the Court granted on 16 July 2021 in NSD616/2021;*
- (g) *Seventhly, the liquidators do not put forward any evidence to suggest that defending the claim will be too expensive or costly or complicated or would be, in some way, detrimental to other creditors. The only other known creditors of the first respondent are litigants in other proceedings and, at least, Westpac has obtained leave to continue its action as above;*
- (h) *Eighthly, the proprietary relief being sought will be important for the purpose of tracing and making claims against other third parties who have received those funds or the benefit of those funds, particularly where those third parties may not be entities over which the liquidators have been appointed; and*
- (i) *Ninthly, and related to the third point, if leave is not granted then there is a risk of multiplicity of proceedings and inconsistent findings in the proof of debt process. That is, if the liquidators did not accept the claims in full then Societe Generale would need to appeal those decisions in other litigation.*
- (j) *Finally, although not consented to by the liquidators, no evidence is led by them resisting the application.*

10. In all the circumstances the court should grant leave to the applicant to pursue its valuable proprietary interest claim and the preceding more generally.

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Sinclair Gray
sinclairgray@12thfloor.com.au

Counsel for the Applicant
0416 183 769