

NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 14/07/2021 8:49:15 AM AEST and has been accepted for filing under the Court's Rules. Filing and hearing details follow and important additional information about these are set out below.

Filing and Hearing Details

Document Lodged: Originating process (Rule 2.2): Federal Court (Corporations) Rules 2000 form 2
File Number: NSD681/2021
File Title: SMBC LEASING AND FINANCE, INC. ARBN 602 309 366 v FORUM ENVIRO (AUST) PTY LTD (VOLUNTARY ADMINISTRATORS APPOINTED) ACN 607 484 364 & ANOR
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing: Hearing
Time and date for hearing: 18/08/2021, 11:00 AM
Place: Court Room 19C, Level 17, Law Courts Building 184 Phillip Street Queens Square, Sydney



Sia Lagos

Dated: 14/07/2021 8:50:42 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.

The Reason for Listing shown above is descriptive and does not limit the issues that might be dealt with, or the orders that might be made, at the hearing.

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.

This filing has been automatically accepted.



Originating application

No. _____ of 20____

Federal Court of Australia
District Registry: New South Wales
Division: General

SMBC Leasing and Finance, Inc. ARBN 602 309 366

Applicant

Forum Enviro (Aust) Pty Ltd (voluntary administrators appointed) ACN 607 484 364 and others

Respondents

To the Respondent

The Applicant applies for the relief set out in this application.

The Court will hear this application, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, then the Court may make orders in your absence.

You must file a notice of address for service (Form 10) in the Registry before attending Court or taking any other steps in the proceeding.

Time and date for hearing: [Registry will insert time and date]

Place: [address of Court]

The Court ordered that the time for serving this application be abridged to [Registry will insert date, if applicable].

Date:

Signed by an officer acting with the authority
of the District Registrar

Filed on behalf of (name & role of party)

Prepared by (name of person/lawyer) Maria Yiasemides

Law firm (if applicable) Jones Day

Tel (02) 8272 0500 Fax (02) 8272 0599

Email myiasemides@jonesday.com

Address for service Level 41, 88 Phillip Street, Sydney, NSW 2000
(include state and postcode)



Details of claim

On the grounds stated in the statement of claim, accompanying affidavit or other document prescribed by the Rules, the Applicant claims:

As against the First Respondent

1. An order that the First Respondent be wound up under the provisions of the *Corporations Act 2001* (Cth) (**Corporations Act**).
2. An order that Jason Preston, Jason Ireland and Katherine Sozou of Level 12, 20 Martin Place, Sydney NSW 2000 jointly and severally, or some other fit and proper person, be appointed liquidators of the First Respondent, Forum Enviro (Aust) Pty Ltd (voluntary administrators appointed).
3. An order that the Plaintiff's costs of the winding up application be costs in the liquidation of the First Respondent.

As against the Second Respondent

4. Judgment for the Applicant against the Second Respondent in the amount of \$98,921,245.45 plus GST.
5. A declaration that the Second Respondent holds on trust for the Applicant all funds that he has received or controls that were paid by the Applicant in connection with the Receivables Contracts, or the traceable property acquired using those funds.
6. An order that the Second Respondent disclose to the Applicant all facts within his knowledge as to the present whereabouts of the funds received by the First Respondent from the Applicant in connection with the Receivables Contracts, or the traceable property acquired using those funds.
7. An order that the Second Respondent account to the Applicant for all funds that he has received or controls through related entities that were paid by the Applicant in connection with the Receivables Contracts.
8. An order that the Second Respondent pay equitable compensation.
9. An order that the Second Respondent pay damages for the tort of unlawful means conspiracy.
10. An order that the Second Respondent pay damages in deceit.
11. An order that the Second Respondent pay damages pursuant to section 236 of the Australian Consumer Law set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth).



12. An order that the Second Respondent pay damages pursuant to section 12GF of the *Australian Securities and Investments Commission Act 2001* (Cth), further or alternatively pursuant to section 1041I of the Corporations Act.
13. Interest, including interest up to judgment pursuant to section 52(2)(a) of the *Federal Court Act 1976* (Cth) (**Federal Court Act**).
14. Interest on judgment pursuant to section 52 of the Federal Court Act and rule 39.06 of the *Federal Court Rules 2011* (Cth).
15. Costs.

As against each Respondent

16. Such further or other orders as the Court deems fit.

In this originating application, the **Receivables Contracts** means any arrangement between the First Respondent or the First Respondent acting as agent for Flexirent Capital Pty Ltd (ABN 93 064 046 046), pursuant to which the Applicant sold the receivables under contracts purportedly entered for the purchase of equipment between the First Respondent (including as agent) and Veolia Environmental Services (Australia) Pty Ltd (ABN 20 051 316 584).

Applicant's address

The Applicant's address for service is:

Place: Level 41, 88 Phillip Street, Sydney NSW 2000

Attention: Maria Yiasemides and Roger Dobson

Email: myiasemides@jonesday.com; rdobson@jonesday.com

The Applicant's address is:

Place: Level 40, The Chifley Tower, 2 Chifley Square, Sydney, NSW 2000

Attention: John Gilroy

Email: john_gilroy@au.smbc.co.jp

Service on the Respondent

It is intended to serve this application on all Respondents.



Date: 13 July 2021

A handwritten signature in black ink, appearing to read 'Maria Yiasemides', with a horizontal line underneath.

Signed by Maria Yiasemides
Lawyer for the Applicant

**Schedule**

No. of 20

Federal Court of Australia
District Registry: New South Wales
Division: General

Applicant

Applicant: SMBC Leasing and Finance, Inc. ARBN 602 309 366

Respondents

First Respondent Forum Enviro (Aust) Pty Ltd (voluntary administrators appointed)

Second Respondent: Basile Papadimitriou