

NOTICE OF FILING

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Details of Filing

Document Lodged: Affidavit - Form 59 - Rule 29.02(1)
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



Sia Lagos

Dated: 14/07/2021 9:27:42 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 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. of 2021

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

SMBC Leasing and Finance, Inc. Sydney Branch ABN 88 327 596 442

Applicant

Forum Enviro (Aust) Pty Ltd ABN 78 607 484 364

First Respondent

Basile Papadimitriou

Second Respondent

Affidavit of: **Roger Dobson**
Address: Level 41, 88 Phillip Street, Sydney 2000
Occupation: Solicitor
Date: 13 July 2021

Contents

Document number	Details	Paragraph	Page
1	Affidavit of Roger Dobson sworn on 13 July 2021 in support of Originating Application filed 13 July 2021.	N/A	1-13
	Exhibit "RD1" being a paginated bundle of documents.	N/A	14-352

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 L41 Aurora Place, 88 Phillip Street, Sydney, NSW 2000
(include state and postcode)

I Roger Dobson, Solicitor, Level 41, 88 Phillip Street Sydney 2000, say on oath:

1. I am a Partner at Jones Day and the Solicitor with carriage of this matter on behalf of the Applicant, SMBC Leasing & Finance Inc. (**SMBC L&F**). I am authorised to make this affidavit on the Applicant's behalf.
2. I make this affidavit in support of the Originating Application filed by the Applicant on 13 July 2021.
3. Exhibited to me at the time of swearing this affidavit is a paginated bundle of documents marked "**RD1**", which I refer to in this affidavit by reference to page numbers at the bottom right hand corner.
4. I swear this affidavit to be true and correct to the best of my own knowledge, information and belief. Where indicated otherwise, I depose to matters on the basis of information provided by another person and in the belief that the source of my information is true and correct.

Background

5. The Applicant, SMBC L&F is a company incorporated in New York and registered in Australia as a Foreign Company. **Exhibited at pages 14-26 of Exhibit RD1** is a copy of a Current Organisation Extract obtained from the Australian Securities and Investment Commission (**ASIC**) in respect of SMBC L&F.
6. The Applicant is engaged in the business of, inter alia, providing finance for its clients' leasing arrangements in Australia.
7. The First Respondent, Forum Enviro (Aust) Pty Ltd (**Forum Enviro**) is a company that was first registered in August 2015. **Exhibited at pages 27-37 of Exhibit RD1** is a copy of a Current Organisation Extract obtained from ASIC. That extract records that Forum Enviro is a wholly owned subsidiary of The Forum Group of Companies Pty Ltd.
8. **Exhibited at pages 38-65 of Exhibit RD1** is a copy of a Current Organisation Extract obtained from ASIC in relation to The Forum Group of Companies Pty Ltd.
9. The Second Respondent, Basile Papadimitriou (also known as Bill Papas) (**Mr Papas**) is the sole director and secretary of Forum Enviro, a position he has held since the company was incorporated in 2015. Mr Papas is also the sole director and secretary of Forum Enviro's parent company, The Forum Group of Companies Pty Ltd.

10. **Exhibited at pages 66-89 of Exhibit RD1** is a an ASIC Personal Name Extract (Current and Historical) that I caused to be obtained in relation to Mr Papas. That extract records that Mr Papas holds a number of officer roles within a number of corporations, including those bearing the “Forum” name, and shareholdings in various entities.
11. **Exhibited at pages 90-98 of Exhibit RD1** is a national property ownership report that I caused to be obtained from InfoTrack in relation to Mr. Papas. That report records that the property registers in each of the states and territories in Australia do not have any registrations in the name of “Basile Papadimitriou”.

The Applicant’s transactions involving Forum Enviro

12. SMBC L&F has entered into two sets of invoice financing arrangements involving Forum Enviro, the first in 2018 and the second in 2020.
13. Those invoicing transactions involved the entry into an agreement with a “customer” of Forum Enviro, being Veolia Environmental Services (Australia) Pty Ltd (**Veolia**), to provide goods or services, and Forum Enviro selling the right to receive payments under the agreement with Veolia (referred to as ‘receivables’) to SMBC L&F, which assumed the credit risk for those payments.
14. In all instances, the ‘receivables’ purchased by SMBC L&F were rental payments for waste management or disinfectant systems allegedly leased by Veolia pursuant to Technology Licence Agreements it had purportedly entered into with Forum Enviro.

The 2018 Master Receivables Agreement

15. The first set of transactions was entered into in 2018.
16. On 13 June 2018, Forum Enviro entered into a Principal and Agency Agreement with Flexirent Capital Pty Ltd (**Flexirent**), which set out the terms on which Forum Enviro would act as Flexirent’s undisclosed agent in relation to certain rental, lease and licence agreements that Flexirent was in the business of providing. **Exhibited at pages 99-127 of Exhibit RD1** is a copy of that agreement.
17. On 2 August 2018, SMBC L&F entered into a Master Receivables and Acquisition Servicing Agreement with Flexirent (**the 2018 MRASA**) and a Supplemental Deed. **Exhibited at pages 128-179 of Exhibit RD1** is a copy of the 2018 MRASA and the Supplemental Deed.

18. The 2018 MRASA and the ancillary documents set out the basis on which SMBC would purchase receivables from Flexirent that arose under contracts entered into by Forum as Flexirent's agent, and the terms which would apply to any such purchase.
19. In particular:
- (a) any purchase would be documented by way of separate "Offer Letters" sent by Flexirent and accepted by SMBC, which would incorporate terms set out in the 2018 MRASA;
 - (b) each Offer Letter would specify the receivables being sold and the purchase price payable by SMBC;
 - (c) various representations and warranties would be given by Flexirent in relation to each receivable; and
 - (d) under the arrangement, Forum Enviro was acting as undisclosed agent for Flexirent and:
 - (i) any purchase would take effect by way of equitable assignment, although SMBC had rights to obtain the legal title in certain circumstances (for example, by providing notice of the assignment to the relevant customer); and
 - (ii) Forum Enviro would act as the "servicer" and "collection agent", meaning that it would collect payments under the relevant contracts and forward those to SMBC, rather than payments being made to SMBC directly.
20. On 2 August 2018, SMBC L&F, Flexirent and Forum Enviro entered into an Agent Side Letter, under which SMBC L&F appointed Forum Enviro as its collection agent in relation to the receivables from the various underlying leasing arrangements in respect of the equipment. The arrangement provided for in clause 2.5 of the Agent Side Letter was such that the lessee would pay Forum Enviro, who would then be required to remit the money to SMBC L&F's account on the same business day that payment was received. **Exhibited at pages 180-188 of Exhibit RD1** is a copy of the Agent Side Letter.
21. Also on 2 August 2018, Flexirent executed a Title Perfection Power of Attorney Deed Poll (**TP Power of Attorney**). Under the TP Power of Attorney, Flexirent appointed each director and other specified officers of SMBC L&F severally as its attorney to take steps to perfect SMBC's interest in the assigned receivables following a "Title Perfection

Event” (as defined) under the 2018 MRASA. **Exhibited at pages 189-192 of Exhibit RD1** is a copy of the TP Power of Attorney.

22. Four separate Offer Letters were sent by Flexirent and accepted by SMBC L&F under the terms of the 2018 MRASA between 6 August 2018 and 19 December 2018. In each case, the receivables sold to SMBC L&F were rental payments that were owed by Veolia pursuant to Technology Licence Agreements it had allegedly entered into with Forum (as undisclosed agent for Flexirent). Each of those Technology Licence Agreements related to the rental of ORCA food waste management systems from Forum over a 60 month term.
23. As discussed at paragraph 19(d) above, under the terms of the 2018 MRASA, the beneficial title to each ORCA food waste management system was also purchased by SMBC L&F under the Offer Letters, and SMBC L&F held rights to acquire the legal title in certain circumstances (for example, by providing notice of the assignment to the relevant customer).

Details of purchases made by SMBC L&F pursuant to the 2018 MRASA

24. On 6 August 2018, SMBC L&F received an Offer Letter from Flexirent (**First 2018 Offer Letter**). The First 2018 Offer Letter identifies two underlying Technology Licence Agreements purportedly executed by Veolia:
 - (a) a Technology Licence Agreement – Waste Management commencing 5 Jul 2018 (Usage Charge: \$139,920 per month for 60 months); and
 - (b) a Technology Licence Agreement – Waste Management commencing 5 Aug 2018 (Usage Charge: \$161,700 per month for 60 months).
25. The amount paid by SMBC L&F pursuant to the First 2018 Offer Letter and the terms of the 2018 MRASA was in the sum of **\$14,411,503.49**. **Exhibited at pages 193-215 of Exhibit RD1** is a copy of the First 2018 Offer Letter.
26. I am informed by Michael Timpany of SMBC L&F, and verily believe, that the payments referred to in the following paragraphs 27 to 33 were made by SMBC L&F to Forum Enviro on the dates stipulated, and that SMBC L&F are recalling records that are currently in archive that constitute the payment confirmations for each of these transactions. Once these payment confirmations have been retrieved from the archive records and provided to me, I will supplement my evidence with those records.

27. On 28 September 2018, SMBC L&F received a second Offer Letter from Flexirent (**Second 2018 Offer Letter**). The Second 2018 Offer Letter identified an underlying Technology Licence Agreement – Waste Management commencing 1 Sep 2018 (Usage Charge: \$80,850 per month) which was purportedly executed by Veolia.
28. The amount paid by SMBC L&F pursuant to the Second 2018 Offer Letter and the terms of the 2018 MRASA was in the sum of **\$3,829,312.30**. **Exhibited at pages 216-226 of Exhibit RD1** is a copy of the Second 2018 Offer Letter.
29. On 23 October 2018, SMBC L&F received a third Offer Letter from Flexirent (**Third 2018 Offer Letter**). The Third Offer Letter identified an underlying Technology Licence Agreement – Waste Management commencing 1 October 2018 (Usage Charge: \$118,800 per month for 60 months) which was purportedly executed by Veolia.
30. The amount paid by SMBC L&F pursuant to the Third 2018 Offer Letter and the terms of the 2018 MRASA was in the sum of **\$5,728,041**. **Exhibited at pages 227-228 of Exhibit RD1** is a copy of the Third 2018 Offer Letter.
31. On 19 December 2018, SMBC L&F received a fourth Offer Letter from Flexirent (**Fourth 2018 Offer Letter**). The Fourth Offer Letter identified an underlying Technology Licence Agreement – Waste Management commencing 1 December 2018 (Usage Charge: \$119,130 per month) which was purportedly executed by Veolia.
32. The amount paid by SMBC L&F pursuant to the Fourth 2018 Offer Letter and the terms of the 2018 MRASA was in the sum of **\$5,740,857.35**. **Exhibited at pages 229-240 of Exhibit RD1** is a copy of the Fourth 2018 Offer Letter.
33. The total amount paid by SMBC L&F as a result of the Offer Letters issued pursuant to the 2018 MRASA as referred to above is **\$29,709,714.14**.

The 2020 Master Receivables Agreement

34. The second set of transactions were entered into in 2020 and 2021.
35. On 17 July 2020, Forum Enviro and SMBC L&F entered into a further Master Receivables Acquisition and Servicing Agreement (**2020 MRASA**) and a Supplemental Deed. Those documents set out the basis on which SMBC L&F would purchase receivables from Forum Enviro that arose under contracts entered into by Forum Enviro, and the terms which would apply to any such purchase. **Exhibited at pages 241-286 of Exhibit RD1** is a copy of the 2020 MRASA and the Supplemental Deed.

36. The terms applicable to the 2020 MRASA are very similar to those set out in the 2018 MRASA, albeit that:
- (a) the 2020 MRASA would apply to receivables that arose under contracts that Forum Enviro had entered in its personal capacity, rather than as an agent for Flexirent;
 - (b) SMBC L&F would acquire the legal interest in any receivables in the first instance, rather than the purchase taking effect as an equitable assignment which SMBC could later perfect; and
 - (c) SMBC L&F would not acquire any interest in the assets related to the receivables (i.e. the assets purportedly leased to Veolia).
37. Fifteen separate Offer Letters were sent by Forum Enviro and accepted by SMBC L&F under the terms of the 2020 MRASA between 27 July 2020 and 21 May 2021. In each case, the receivables sold to SMBC L&F were rental payments that were allegedly owed by Veolia pursuant to Technology Licence Agreements it had purportedly entered into with Forum Enviro. Each of those Technology Licence Agreements related to the rental of:
- (a) ORCA food waste management systems;
 - (b) Iugis waste management systems; or
 - (c) Surfacide Helios disinfection systems.

Purchases made by SMBC L&F pursuant to the 2020 MRASA

38. On 27 July 2020, SMBC L&F received an Offer Letter from Forum Enviro (**First 2020 Offer Letter**). The First 2020 Offer Letter identified a Master Technology Licence Agreement – Waste Management commencing 1 Aug 2020 (Usage Charge: \$167,750 per month for 60 months) which was purportedly executed by Veolia.
39. The amount paid by SMBC L&F pursuant to the First 2020 Offer Letter and the terms of the 2020 MRASA was in the sum of **\$8,444,416,05**. **Exhibited at pages 287-289 of Exhibit RD1** is a copy of the First 2020 Offer Letter.
40. The same day, on 27 July 2020, SMBC L&F received a second Offer Letter from Forum Enviro (**Second 2020 Offer Letter**). The Second 2020 Offer Letter identified a Master Technology Licence Agreement – Health Management commencing 1 Aug 2020 (Usage

Charge: \$30,800 per month per month for 60 months) which was purportedly executed by Veolia.

41. The amount paid by SMBC L&F pursuant to the Second 2020 Offer Letter and the terms of the 2020 MRASA was in the sum of **\$1,550,450.13**. **Exhibited at pages 290-292 of Exhibit RD1** is a copy of the Second 2020 Offer Letter. This payment was made together with the payment referred to in paragraph 39. A record of these payments is retained by SMBC L&F in the form of a SWIFT payment on SMBC L&F's Neo Payment system (**Payment Confirmation**). **Exhibited at page 293 of Exhibit RD1** is a copy of the Payment Confirmation for these two payments.
42. On 21 August 2020, SMBC L&F received a third Offer Letter from Forum Enviro (**Third 2020 Offer Letter**). The Third 2020 Offer Letter identified a Master Technology Licence Agreement – Waste Management commencing 1 September 2020 (Usage Charge: \$130,680 per month for 60 months) which was purportedly executed by Veolia.
43. The amount paid by SMBC L&F pursuant to the Third 2020 Offer Letter and the terms of the 2020 MRASA was in the sum of **\$6,576,383.83**. **Exhibited at pages 294-295 of Exhibit RD1** is a copy of the Third 2020 Offer Letter.
44. The same day, on 21 August 2020, SMBC L&F received a fourth Offer Letter from Forum Enviro (**Fourth 2020 Offer Letter**). The Fourth 2020 Offer Letter identified a Master Technology Licence Agreement – Health Management commencing 1 September 2020 (Usage Charge: \$49,280 per month per month for 60 months) which was purportedly executed by Veolia.
45. The amount paid by SMBC L&F pursuant to the Fourth 2020 Offer Letter and the terms of the 2020 MRASA was in the sum of **\$2,479,983.13**. **Exhibited at pages 296-297 of Exhibit RD1** is a copy of the Fourth 2020 Offer Letter. This payment was made together with the payment referred to in paragraph 43. **Exhibited at page 298 of Exhibit RD1** is a copy of the Payment Confirmation for these two payments.
46. On 28 September 2020, SMBC L&F received a fifth Offer Letter from Forum Enviro (**Fifth 2020 Offer Letter**). The Fifth 2020 Offer Letter identified a Master Technology Licence Agreement – Waste Management commencing 1 October 2020 (Usage Charge: \$64,680 per month for 60 months) which was purportedly executed by Veolia.
47. The amount paid by SMBC L&F pursuant to the Fifth 2020 Offer Letter and the terms of the 2020 MRASA was in the sum of **\$3,256,278.09**. **Exhibited at pages 299-300 of Exhibit RD1** is a copy of the Fifth 2020 Offer Letter. **Exhibited at page 301 of Exhibit RD1** is a copy of the Payment Confirmation for this payment.

48. On 13 November 2020, SMBC L&F received a sixth Offer Letter from Forum Enviro (**Sixth 2020 Offer Letter**). The Sixth 2020 Offer Letter identified a Master Technology Licence Agreement – Waste Management commencing 9 November 2020 (Usage Charge: \$173,250 per month for 60 months) which was purportedly executed by Veolia.
49. The amount paid by SMBC L&F pursuant to the Sixth 2020 Offer Letter and the terms of the 2020 MRASA was in the sum of **\$8,712,386.32**. **Exhibited at pages 302-303 of Exhibit RD1** is a copy of the Sixth 2020 Offer Letter.
50. The same day, on 13 November 2020, SMBC L&F received a seventh Offer Letter from Forum Enviro (**Seventh 2020 Offer Letter**). The Seventh 2020 Offer Letter identified a Master Technology Licence Agreement – Health Management commencing 9 November 2020 (Usage Charge: \$49,280 per month for 60 months) which was purportedly executed by Veolia.
51. The amount paid by SMBC L&F pursuant to the Seventh 2020 Offer Letter and the terms of the 2020 MRASA was in the sum of **\$2,478,189.82**. **Exhibited at pages 304-305 of Exhibit RD1** is a copy of the Seventh 2020 Offer Letter. This payment was made together with the payment referred to in paragraph 49. **Exhibited at page 306 of Exhibit RD1** is a copy of the Payment Confirmation for these two payments.
52. On 21 December 2020, SMBC L&F received an eighth Offer Letter from Forum Enviro (**the Eighth 2020 Offer Letter**). The Eighth 2020 Offer Letter identified a Master Technology Licence Agreement – Waste Management commencing 1 January 2021 (Usage Charge: \$184,800 per month for 60 months) which was purportedly executed by Veolia.
53. The amount paid by SMBC L&F pursuant to the Eighth 2020 Offer Letter and the terms of the 2020 MRASA was in the sum of **\$9,297,734.49**. **Exhibited at pages 307-308 of Exhibit RD1** is a copy of the Eighth 2020 Offer Letter.
54. The same day, on 21 December 2020, SMBC L&F received a ninth Offer Letter from Forum Enviro (**Ninth 2020 Offer Letter**). The Ninth 2020 Offer Letter identified a Master Technology Licence Agreement – Health Management commencing 1 January 2021 (Usage Charge: \$35,200 per month for 60 months) which was purportedly executed by Veolia.
55. The amount paid by SMBC L&F pursuant to the Ninth 2020 Offer Letter and the terms of the 2020 MRASA was in the sum of **\$1,770,997.06**. **Exhibited at pages 309-310 of Exhibit RD1** is a copy of the Ninth 2020 Offer Letter. This payment was made together

- with the payment referred to in paragraph 53. **Exhibited at page 311 of Exhibit RD1** is a copy of the Payment Confirmation for these two payments.
56. On 2 February 2021, SMBC L&F received another Offer Letter from Forum Enviro (**First 2021 Offer Letter**). The First 2021 Offer Letter identified a Master Technology Licence Agreement – Waste Management commencing 1 February 2021 (Usage Charge: \$132,000 per month for 60 months) which was purportedly executed by Veolia.
57. The amount paid by SMBC L&F pursuant to the First 2021 Offer Letter and the terms of the 2020 MRASA was in the sum of **\$6,649,113.79**. **Exhibited at pages 312-313 of Exhibit RD1** is a copy of the First 2021 Offer Letter. **Exhibited at page 314 of Exhibit RD1** is a copy of the Payment Confirmation for this payment.
58. On 8 March 2021, SMBC L&F received another Offer Letter from Forum Enviro (**Second 2021 Offer Letter**). The Second 2021 Offer Letter identified a Master Technology Licence Agreement – Waste Management commencing 1 March 2021 (Usage Charge: \$209,550 per month for 60 months) which was purportedly executed by Veolia.
59. The amount paid by SMBC L&F pursuant to the Second 2021 Offer Letter and the terms of the 2020 MRASA was in the sum of **\$10,533,007.84**. **Exhibited at pages 315-316 of Exhibit RD1** is a copy of the Second 2021 Offer Letter.
60. On 8 March 2021, SMBC L&F received another Offer Letter from Forum Enviro (**Third 2021 Offer Letter**). The Third 2021 Offer Letter identified a Master Technology Licence Agreement – Health Management commencing 1 March 2021 (Usage Charge: \$35,200 per month for 60 months) which was purportedly executed by Veolia.
61. The amount paid by SMBC L&F pursuant to the Third 2021 Offer Letter and the terms of the 2020 MRASA was in the sum of **\$1,769,324.17**. **Exhibited at pages 317-318 of Exhibit RD1** is a copy of the Third 2021 Offer Letter. This payment was made together with the payment referred to in paragraph 59. **Exhibited at page 319 of Exhibit RD1** is a copy of the Payment Confirmation for these two payments.
62. On 19 April 2021, SMBC L&F received another Offer Letter from Forum Enviro (**Fourth 2021 Offer Letter**). The Fourth 2021 Offer Letter identified a Master Technology Licence Agreement – Waste Management commencing 15 April 2021 (Usage Charge: \$199,650 per month for 60 months) which was purportedly executed by Veolia.
63. The amount paid by SMBC L&F pursuant to the Fourth 2021 Offer Letter and the terms of the 2020 MRASA was in the sum of **\$10,018,326.86**. **Exhibited at pages 320-321 of Exhibit RD1** is a copy of the Fourth 2021 Offer Letter.

64. The same day, on 19 April 2021, SMBC L&F received another Offer Letter from Forum Enviro (**Fifth 2021 Offer Letter**). The Fifth 2021 Offer Letter identified a Master Technology Licence Agreement – Health Management commencing 15 April 2021 (Usage Charge: \$28,160 per month for 60 months) which was purportedly executed by Veolia.
65. The amount paid by SMBC L&F pursuant to the Fifth 2021 Offer Letter and the terms of the 2020 MRASA was in the sum of **\$1,413,053.28**. **Exhibited at pages 322-323 of Exhibit RD1** is a copy of the Fifth 2021 Offer Letter. This payment was made together with the payment referred to in paragraph 63. **Exhibited at page 324 of Exhibit RD1** is a copy of the Payment Confirmation for these two payments.
66. Finally, on 21 May 2021, SMBC L&F received another Offer Letter from Forum Enviro (**Sixth 2021 Offer Letter**). The Sixth 2021 Offer Letter identified a Master Technology Licence Agreement – Waste Management commencing 18 May 2021 (Usage Charge: \$180,180 per month for 60 months) which was purportedly executed by Veolia.
67. The amount paid by SMBC L&F pursuant to the Sixth 2021 Offer Letter and the terms of the 2020 MRASA was in the sum of **\$9,044,264.61**. **Exhibited at pages 325-326 of Exhibit RD1** is a copy of the Sixth 2021 Offer Letter. **Exhibited at page 327 of Exhibit RD1** is a copy of the Payment Confirmation for this payment.
68. The total amount paid by SMBC L&F as a result of the Offer Letters issued pursuant to the 2020 MRASA is **\$83,993,909.47**.
69. The total amount paid by SMBC L&F as a result of the Offer Letters issued pursuant to both the 2018 MRASA and the 2020 MRASA is **\$113,703,623.61**.

Allegations of fraud made by Westpac and Societe General

70. I am aware through records available on the Federal Court of Australia Website, that:
- (a) Westpac Banking Corporation (**Westpac**) commenced proceedings on 28 June 2021 against Forum Finance Pty Limited (**Forum Finance**) in the Federal Court of Australia, which have been designated proceedings no. NSD616/2021; and
 - (b) Societe Generale commenced proceedings on 1 July 2021 against Forum Finance in the Federal Court of Australia, which have been designated proceedings no. NSD642/2021.
71. **Exhibited at pages 328-341 of Exhibit RD1** is a Current and Historical Organisation Extract obtained from ASIC in relation to Forum Finance. That extract records that

Forum Finance, like Forum Enviro, is a wholly owned subsidiary of The Forum Group of Companies Pty Ltd. It also records that the directors of Forum Finance are Mr Papas and Vincenzo Frank Tesoriero (**Mr Tesoriero**), and that Mr Papas is also the secretary.

72. I have applied to the Federal Court of Australia and obtained access to documents filed by Westpac and Societe Generale in the NSD616/2021 and NSD642/2021, including the originating processes filed in those matters, and the affidavits filed and read in the respective proceedings. The Federal Court website and those documents record that:
- (a) Westpac and Societe Generale seek relief against Forum Finance, Mr Papas and Mr Tesoriero, in relation to various frauds alleged to have been conducted by the respondents in connection with monies advanced by Westpac and Societe Generale to Forum Finance;
 - (b) The relief sought includes freezing and search orders in relation to the respondents, and a winding up order in relation to Forum Finance;
 - (c) Westpac and Societe Generale allege that they entered into invoice financing transactions with Forum Finance on the basis of representations made by Forum Finance that it has entered into various leasing arrangements with its customers, including Veolia;
 - (d) Freezing and search orders were made against Forum Finance and Mr Papas on 28 June 2021 and freezing orders against Mr Tesoriero on 2 July 2021 (which have since been varied and extended).
73. On 9 July 2021, I observed via video link, a hearing that took place in NSD616/2021 and NSD642/2021, in relation to Westpac's interlocutory application for provisional liquidators to be appointed to Forum Finance and in relation to the extension of the freezing orders previously made by the Federal Court and referred to above. During the course of the hearing, Mr Andrew Martin as the legal representative for Forum Finance informed the Court that Forum Finance consented to the making of a winding up order in relation to Forum Finance and the appointment of liquidators.
74. On that date, Lee J made orders that, inter alia:
- (a) Forum Finance be wound-up on just and equitable grounds under s 461(1)(k) of the *Corporations Act 2001* (Cth);
 - (b) Jason Preston and Jason Ireland of McGrathNicol be appointed as joint and several liquidators of Forum Finance; and

(c) Mr Preston and Ireland be provided with access to all documents of Forum Finance that were seized in accordance with the search orders made on 28 June 2021.

75. Justice Lee gave reasons for judgment on the winding up application *ex tempore*. At the time of swearing this affidavit, I have not been able to obtain a copy of the judgment from the Federal Court of Australia.

Appointment of Administrators

76. On 9 July 2021, I became aware through searches conducted on the ASIC record, that administrators were appointed by Mr Papas to The Forum Group of Companies Pty Ltd and a number of its wholly owned subsidiaries, including Forum Enviro.

77. **Exhibited at pages 342-352 of Exhibit RD1** is a copy of an ASIC Current and Historical Organisation Extract conducted on 13 July 2021. That extract records that Domenico Allessandro Calabretta, Grahame Robert Ward and Thyge Trafford-Jones of Makay Goodwin have been appointed as joint and several administrators of Forum Enviro.

78. I am informed by Maria Yiasemides, Partner of Jones Day, who is assisting on this matter, that she telephoned the office of Makay Goodwin on 9 July 2021 at approximately 5pm, and left a message with the operator to the effect that Jones Day acts for a major creditor of Forum Enviro, and that Jones Day would like to speak with the administrators appointed to that entity. Ms Yiasemides also informed me that she provided the operator with her and my telephone contact details.

79. On 12 July 2021, I sent an email to a representative of the administrators of Forum Enviro. **Exhibited at page 353 of Exhibit RD1** is a copy of my email.

80. On 12 July 2021, I received a letter from Kieren Kelly of Hilton Bradley Lawyers, the lawyers acting for the administrators of Forum Enviro. **Exhibited at pages 354 to 355 of Exhibit RD1** is a copy of that letter.

Sworn by the deponent
at Sydney
in New South Wales
on 13 July 2021
Before me:

Roger Dobson

Signature of deponent

Signature of witness

Name:

Qualification: