

## NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 14/07/2021 8:57:40 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:	Interlocutory Application - if seeking Freezing or Search Order - Form 35 - Rule 17.01(1)(a)
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:	Interlocutory Hearing
Time and date for hearing:	15/07/2021, 2:30 PM
Place:	Court Room Not Assigned, Level 17, Law Courts Building 184 Phillip Street Queens Square, Sydney



*Sia Lagos*

Dated: 14/07/2021 9:27:39 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.



## Interlocutory 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 Forum Enviro (Aust) Pty Ltd (voluntary administrators appointed)  
ACN 607 484 364**

**And to Basile Papadimitriou**

The Applicant applies for the interlocutory orders 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.

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

**Place:** [address of Court]

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Filed on behalf of (name & role of party) SMBC Leasing and Finance, Inc., Applicant  
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)

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



## Interlocutory orders sought

### General Orders

1. An order that the Applicant be granted leave to file the:
  - (a) Originating Application dated 13 July 2021;
  - (b) this interlocutory Application dated 13 July 2021;
  - (c) affidavit of Roger Dobson sworn 13 July 2021; and
  - (d) affidavit of Michael Timpany sworn 13 July 2021.
2. An order that this Interlocutory Application be returnable instanter.
3. An order pursuant to rule 1.39 of the Federal Court Rules 2011 (Cth) (**FCR**) abridging the time for service of the Originating Process, this Interlocutory Application and the supporting affidavits to 5.00pm, 14 July 2021 with service to be effected:
  - (a) on the First Respondent by email to the solicitor for the administrators of the First Respondent (Kieran Kelly of Hilton Bradley Lawyers) at kieran.kelly@hiltonbradley.com.au;
  - (b) on the second respondent by:
    - (i) email to bpapas@forumgroup.com.au; and
    - (ii) email to Panetta & Associates Lawyers at the email address r.panetta@panetta.com.au.
  - (c) and otherwise personally on each respondent as soon as possible thereafter.
4. This interlocutory application be listed for further hearing at a time suitable to the Court.

### Freezing Order against the second respondent

5. A freezing order against the second respondent pursuant to rule 7.32 of the FCR, in the form of the orders attached as **Annexure A** to this interlocutory application.

### Provisional Liquidation of the First Respondent

6. To the extent necessary, an order that the applicant have leave under section 440D(1)(b) of the *Corporations Act 2001* (Cth) (**Corporations Act**) to commence and to prosecute proceedings against the First Respondent while the First Respondent is in administration.
7. An order pursuant to section 472(2) of the Corporations Act that Jason Preston, Jason Ireland and Katherine Sozou of Level 12, 20 Martin Place, Sydney NSW 2000 jointly and severally, or such other fit and proper person as the Court sees fit, be appointed provisional liquidators of the First Respondent.



8. An order that the provisional liquidators have control over all of the assets of the First Respondent.
9. Pursuant to section 472(3)(b) of the Corporations Act, the provisional liquidators may exercise the following functions and powers:
  - (a) all functions and powers conferred on the provisional liquidators by the Corporations Act or the Federal Court (Corporations) Rules 2000 (Cth) (including those described in section 474(4) of the Corporations Act);
  - (b) the power to carry on the business of the First Respondent;
  - (c) the power to enter the premises of the First Respondent;
  - (d) the power to take possession of all of the books and records of the First Respondent;
  - (e) to investigate and report to the court on the assets of the First Respondent wherever located, giving their value, location and details (including any mortgages, charges or other encumbrances to which they are subject) and the extent of the interest of the First Respondent in the assets;
  - (f) to investigate and report to the court on where any funds obtained by the First Respondent that originated from the applicant is located or has been dispersed to and whether it was used to acquire, in whole or part, any assets and, if so, who holds those assets and where those assets are.
10. An order that the provisional liquidators have access to all documents seized in accordance with the search orders made by order 7 of the orders made by Justice Lee on 28 June 2021 in proceedings No. NSD616/2021.

#### Winding up of the First Respondent

11. In the alternative to paragraphs 6 to 10 above:
  - (a) an order that the prayers for relief contained in the originating application seeking the winding up and appointment of liquidators to the First Respondent be heard separately and in advance of the balance of the prayers for relief;
  - (b) an order that, pursuant to section 461(1)(k) of the Corporations Act, the First Respondent be wound up;
  - (c) an order, pursuant to section 472(1) of the Corporations Act, that Jason Preston, Jason Ireland and Katherine Sozou of McGrathNicol, Level 12, 20 Martin Place, Sydney NSW 2000, or such other fit and proper person as the Court sees fit, are appointed jointly and severally as liquidators of the First Respondent;



- (d) an order dispensing with compliance with rule 5.6 of the Federal Court (Corporations) Rules 2000 (Cth);
- (e) an order that the liquidators have access to all documents seized in accordance with the search orders made by order 7 of the orders made by Justice Lee on 28 June 2021 in proceedings No. NSD616/2021.

#### General orders

- 12. Leave to enter these orders forthwith.
- 13. Such further or other orders as the Court deems fit or necessary.
- 14. Costs.

#### **Service on the Respondents**

It is not intended to serve this application on any Respondents until after determination of the ex parte application.

Date: 13 July 2021

A handwritten signature in black ink, appearing to read "Maria Yiasemides".

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Signed by Maria Yiasemides  
Lawyer for the Applicant

## ANNEXURE A – FREEZING ORDER



## PENAL NOTICE – FREEZING ORDER

**TO:** BASILE PAPADIMITRIOU

**IF YOU (BEING THE PERSON BOUND BY THIS ORDER):**

- (C) REFUSE OR NEGLECT TO DO ANY ACT WITHIN THE TIME SPECIFIED IN THIS ORDER FOR THE DOING OF THE ACT; OR**
- (D) DISOBEY THE ORDER BY DOING AN ACT WHICH THE ORDER REQUIRES YOU NOT TO DO,**

**YOU WILL BE LIABLE TO IMPRISONMENT, SEQUESTRATION OF PROPERTY OR OTHER PUNISHMENT.**

**ANY OTHER PERSON WHO KNOWS OF THIS ORDER AND DOES ANYTHING WHICH HELPS OR PERMITS YOU TO BREACH THE TERMS OF THIS ORDER MAY BE SIMILARLY PUNISHED.**

**TO** BASILE PAPADIMITRIOU

This is a 'freezing order' made against you on [insert] by Justice \_\_\_\_\_ at a hearing without notice to you after the Court was given the undertakings set out in Schedule A to this order and after the Court read the affidavits listed in Schedule B to this order.

### **THE COURT ORDERS:**

#### **INTRODUCTION**

- (1) (a) The application for this order is made returnable immediately.
- (b) The time for service of the application, supporting affidavits and originating process is abridged and service is to be effected by [insert] with service to be effected:
  - (i) email to bpapas@forumgroup.com.au;
  - (ii) email to Panetta & Associates Lawyers at the email address r.panetta@panetta.com.au; and
  - (iii) otherwise personally on the second respondent as soon as possible thereafter.
- (2) Subject to the next paragraph, this order has effect up to and including [insert] (**the Return Date**). On the Return Date at [insert] am/pm] there will be a further hearing in respect of this order before Justice \_\_\_\_\_.
- (3) Anyone served with or notified of this order, including you, may apply to the Court at any time to vary or discharge this order or so much of it as affects the person served or notified.
- (4) In this order:



- (a) 'applicant', if there is more than one applicant, includes all the applicants;
  - (b) 'you', where there is more than one of you, includes all of you and includes you if you are a corporation;
  - (c) 'third party' means a person other than you and the applicant;
  - (d) 'unencumbered value' means value free of mortgages, charges, liens or other encumbrances.
  - (e) 'Relevant Amount' means the amount of AUD \$98,921,245.45 plus GST.
- (5) (a) If you are ordered to do something, you must do it by yourself or through directors, officers, partners, employees, agents or others acting on your behalf or on your instructions.
- (b) If you are ordered not to do something, you must not do it yourself or through directors, officers, partners, employees, agents or others acting on your behalf or on your instructions or with your encouragement or in any other way.

### **FREEZING OF ASSETS**

- (6) (a) You must not remove from Australia or in any way dispose of, deal with or diminish the value of any of your assets in Australia ('Australian assets') up to the unencumbered value of AUD \$98,921,245.45 plus GST. ('the Relevant Amount').
- (b) If the unencumbered value of your Australian assets exceeds the Relevant Amount, you may remove any of those assets from Australia or dispose of or deal with them or diminish their value, so long as the total unencumbered value of your Australian assets still exceeds the Relevant Amount.
- (c) If the unencumbered value of your Australian assets is less than the Relevant Amount, and you have assets outside Australia ('ex-Australian assets'):
- (i) You must not dispose of, deal with or diminish the value of any of your Australian assets and ex-Australian assets up to the unencumbered value of your Australian and ex-Australian assets of the Relevant Amount; and
  - (ii) You may dispose of, deal with or diminish the value of any of your ex-Australian assets, so long as the unencumbered value of your Australian assets and ex-Australian assets still exceeds the Relevant Amount.
- (7) For the purposes of this order,
- (a) your assets include:
    - (i) all your assets, whether or not they are in your name and whether they are solely or co-owned; and
    - (ii) any asset which you have the power, directly or indirectly, to dispose of or deal with as if it were your own (you are to be regarded as having such power if a third party holds or controls the asset in accordance with your direct or indirect instructions); and
  - (b) the value of your assets is the value of the interest you have individually in your assets.

### **PROVISION OF INFORMATION**

- (8) Subject to paragraph 9, you must:





- (a) at or before the further hearing on the Return Date (or within such further time as the Court may allow) to the best of your ability inform the applicant in writing of all your assets in Australia, giving their value, location and details (including any mortgages, charges or other encumbrances to which they are subject) and the extent of your interest in the assets;
  - (b) within 6 working days after being served with this order, swear and serve on the applicant an affidavit setting out the above information.
- (9) (a) This paragraph (9) applies if you are not a corporation and you wish to object to complying with paragraph 8 on the grounds that some or all of the information required to be disclosed may tend to prove that you:
- (i) have committed an offence against or arising under an Australian law or a law of a foreign country; or
  - (ii) are liable to a civil penalty.
- (b) This paragraph (9) also applies if you are a corporation and all of the persons who are able to comply with paragraph 8 on your behalf and with whom you have been able to communicate, wish to object to your complying with paragraph 8 on the grounds that some or all of the information required to be disclosed may tend to prove that they respectively:
- (i) have committed an offence against or arising under an Australian law or a law of a foreign country; or
  - (ii) are liable to a civil penalty.
- (c) You must:
- (i) disclose so much of the information required to be disclosed to which no objection is taken; and
  - (ii) prepare an affidavit containing so much of the information required to be disclosed to which objection is taken, and deliver it to the Court in a sealed envelope; and
  - (iii) file and serve on each other party a separate affidavit setting out the basis of the objection.

### **EXCEPTIONS TO THIS ORDER**

- (10) This order does not prohibit:
- (a) you paying up to \$2,500 a week on your ordinary living expenses;
  - (b) paying \$25,000 on your reasonable legal expenses;
  - (c) dealing with or disposing of any of your assets in the ordinary and proper course of your business, including paying business expenses bona fide and properly incurred; and
  - (d) in relation to matters not falling within (a), (b) or (c), dealing with or disposing of any of your assets in discharging obligations bona fide and properly incurred under a contract entered into before this order was made, provided that before doing so you give the applicant, if possible, at least two working days written notice of the particulars of the obligation.
- (11) You and the applicant may agree in writing that the exceptions in the preceding



paragraph are to be varied. In that case the applicant or you must as soon as practicable file with the Court and serve on the other a minute of a proposed consent order recording the variations signed by or on behalf of the applicant and you, and the Court may order that the exceptions are varied accordingly.

- (12) (a) This order will cease to have effect if you:
- (i) pay the sum of AUD \$98,921,245.45 plus GST into Court; or
  - (ii) pay that sum into a joint bank account in the name of your lawyer and the lawyer for the applicant as agreed in writing between them; or
  - (iii) provide security in that sum by a method agreed in writing with the applicant to be held subject to the order of the Court.
- (b) Any such payment and any such security will not provide the applicant with any priority over your other creditors in the event of your insolvency.
- (c) If this order ceases to have effect pursuant 12(a) above, you must as soon as practicable file with the Court and serve on the applicant notice of that fact.

### **COSTS**

- (13) The costs of this application are reserved to the Court hearing the application on the Return Date.

### **PERSONS OTHER THAN THE APPLICANT AND RESPONDENT**

#### **(14) Set off by banks**

This order does not prevent any bank from exercising any right of set off it has in respect of any facility which it gave you before it was notified of this order.

#### **(15) Bank withdrawals by the respondent**

No bank need inquire as to the application or proposed application of any money withdrawn by you if the withdrawal appears to be permitted by this order.

#### **(16) Persons outside Australia**

- (a) Except as provided in subparagraph (b) below, the terms of this order do not affect or concern anyone outside Australia.
- (b) The terms of this order will affect the following persons outside Australia:
- (i) you and your directors, officers, employees and agents (except banks and financial institutions);
  - (ii) any person (including a bank or financial institution) who:
    - (A) is subject to the jurisdiction of this Court; and
    - (B) has been given written notice of this order, or has actual knowledge of the substance of the order and of its requirements; and
    - (C) is able to prevent or impede acts or omissions outside Australia which constitute or assist in a disobedience of the terms of this order; and
  - (iii) any other person (including a bank or financial institution), only to the extent that this order is declared enforceable by or is enforced by a court in a country or state that has jurisdiction over that person or over any of that person's assets.



**(17) Assets located outside Australia**

Nothing in this order shall, in respect of assets located outside Australia, prevent any third party from complying or acting in conformity with what it reasonably believes to be its bona fide and properly incurred legal obligations, whether contractual or pursuant to a court order or otherwise, under the law of the country or state in which those assets are situated or under the proper law of any contract between a third party and you, provided that in the case of any future order of a court of that country or state made on your or the third party's application, reasonable written notice of the making of the application is given to the applicant.

**SCHEDULE A**

**UNDERTAKINGS GIVEN TO THE COURT BY THE APPLICANT**

- (1) The applicant undertakes to submit to such order (if any) as the Court may consider to be just for the payment of compensation (to be assessed by the Court or as it may direct) to any person (whether or not a party) affected by the operation of the order.
- (2) As soon as practicable, the applicant will file and serve upon the respondent copies of:
  - (a) this order;
  - (b) the application for this order for hearing on the return date;
  - (c) the following material in so far as it was relied on by the applicant at the hearing when the order was made:
    - (i) affidavits (or draft affidavits);
    - (ii) exhibits capable of being copied;
    - (iii) any written submission; and
    - (iv) any other document that was provided to the Court.
  - (d) a transcript, or, if none is available, a note, of any exclusively oral allegation of fact that was made and of any exclusively oral submission that was put, to the Court;
  - (e) the originating process, or, if none was filed, any draft originating process produced to the Court.
- (3) As soon as practicable, the applicant will cause anyone notified of this order to be given a copy of it.
- (4) The applicant will pay the reasonable costs of anyone other than the respondent which have been incurred as a result of this order, including the costs of finding out whether that person holds any of the respondent's assets.
- (5) If this order ceases to have effect the applicant will promptly take all reasonable steps to inform in writing anyone to who has been notified of this order, or who he has reasonable grounds for supposing may act upon this order, that it has ceased to have effect.
- (6) The applicant will not, without leave of the Court, use any information obtained as a result of this order for the purpose of any civil or criminal proceedings, either in or outside Australia, other than this proceeding.

- (7) The applicant will not, without leave of the Court, seek to enforce this order in any country outside Australia or seek in any country outside Australia an order of a similar nature or an order conferring a charge or other security against the respondent or the respondent's assets.



## SCHEDULE B

### AFFIDAVITS RELIED ON

<b>Name of deponent</b>	<b>Date affidavit made</b>
(1) Roger Dobson	13 July 2021
(2) Michael Timpany	13 July 2021

### NAME AND ADDRESS OF APPLICANT'S LAWYERS

The applicant's lawyers are:

Jones Day  
Level 41, 88 Phillip  
Street  
Sydney NSW 2000

Attention: Roger Dobson and Maria Yiasemides  
[rdobson@jonesday.com](mailto:rdobson@jonesday.com); [myiasemides@jonesday.com](mailto:myiasemides@jonesday.com); T +61 2 8272 0770; M +61 415  
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