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FORUM FINANCE PTY LIMITED (IN LIQUIDATION) ACN 153 301 172 &  
ORS  
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



*Sia Lagos*

Registrar

**Important Information**

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**Westpac Banking Corporation & anor v Forum Finance Pty Ltd (in liquidation)(receivers  
appointed) & ors**

**Federal Court of Australia NSD 616/2021**

**APPLICANTS' OUTLINE OF SUPPLEMENTARY OPENING SUBMISSIONS FOR  
FINAL HEARING**

*Unless otherwise indicated, these submissions use definitions used in the Second Further  
Amended Statement of Claim and Opening Submissions filed on 15 September 2022*

**Introduction**

1. On 15 September 2022, the applicants in the Westpac Proceeding, Westpac Banking Corporation (**WBC**) and Westpac New Zealand Limited (**WNZL**) (together **Westpac**), filed and served an outline of opening submissions for the final hearing (**Opening Submissions**).
2. By these submissions Westpac supplements and updates its Opening Submissions in order to address procedural events which have occurred since their filing. Westpac otherwise relies on the Opening Submissions.

**Events since the Opening Submissions**

*Amended defences from the Tesoriero parties*

3. As set out in the Opening Submissions at [5], the Tesoriero parties foreshadowed an amendment to their defences. By orders made by Thawley J on 28 September 2022 (**September Orders**), the timetabling orders previously made were varied to provide the Tesoriero parties with additional time to serve amended defences, evidence and submissions.
4. On 31 October 2022, Mr Tesoriero and Mr Tesoriero Snr filed and served amended defences. By email sent on 31 October 2022, the solicitors for the Tesoriero parties indicated that a consolidated defence would be filed for the corporate respondents of which Mr Tesoriero was a director, which defence was to reflect that which had been set

out in the amended defence filed by Mr Tesoriero.<sup>1</sup> As set out below, with the exception of 1160 Glen Huntly Rd and Mangusta, all of the Tesoriero-Related Entities (that is, the Tesoriero Entities and the Other Tesoriero Related Companies) are now in external administration. No consolidated defence was filed. However, Westpac proceeds on the basis that 1160 Glen Huntly Rd and Mangusta intend to defend the Westpac Proceeding on the same basis as set out in Mr Tesoriero's amended defence filed 31 October 2022.

*The Tesoriero parties' evidence*

5. Notwithstanding the September Orders, in particular orders 4 and 5, to date no affidavit or documentary evidence or opinion accounting evidence has been filed or served by Mr Tesoriero.
6. On 22 November 2022, Mr Tesoriero indicated via his solicitors that he intended to wait until Westpac had concluded its case before deciding whether to give evidence as he retained the option to lead evidence orally at the conclusion of Westpac's case, consistent with a position previously permitted by Lee J. On 25 November 2022, Westpac, through its solicitors, stated that it disagreed with the interpretation of the September Orders asserted by Mr Tesoriero's solicitors, and requested that Mr Tesoriero at least serve an outline of the evidence that he would likely give at trial. As at the date of these submissions, no outline of evidence has been served by Mr Tesoriero, and nor has he sought any orders varying the September Orders.
7. On 22 November 2022, Mr Tesoriero Snr served his evidence in the Westpac Proceeding, being affidavits from himself and his wife, Teresa Tesoriero (cf Opening Submissions at [102]). By his affidavit and amended defence he disavows knowledge of the payments from 268 Carlisle St's bank account to Theion Ike and D&D Group. That denial sits at odds with his role as one of only two directors of 286 Carlisle Street during the time that the conduct occurred and that he signed an Application and Authority form for the opening of the 286 Carlisle St Commonwealth Bank account number 1-398-6402 as an authorised person, from which it can be inferred that he knew that 286 Carlisle St held at least that account: [CBA.5000.0003.0002](#). Mr Tesoriero Snr and his wife will be required for cross-examination.

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<sup>1</sup> See email from Eric Maben of Aptum Legal dated 31 October 2022.

*Particulars and submissions regarding Maia*

8. In the course of a further request for particulars by Mr Tesoriero and Westpac's response, Westpac has notified Mr Tesoriero that it does not rely on paragraphs 2.4(b)(vi) to (viii) and (xi) of the Consolidated Particulars (CB ~~A.H.8~~) or the assertion of an earlier fraudulent scheme involving Maia as set out in paragraphs ~~A.II.8~~ **A.II.9** [36] and [49] of the Opening Submissions. Westpac relies on the following circumstances in relation to Maia, as set out in paragraph 1(b) of the Response to the Request for Particulars dated 11 November 2022 (see CB ~~A.II.12~~), namely:

- A.II.14**
- a. that Maia advanced funds to certain Forum entities purportedly in connection with rental agreements in place between the Forum entities and end-customers including Veolia, ALH, WesTrac, CHC and Scentre;<sup>2</sup> and
  - b. Maia subsequently discovered oddities in those arrangements,<sup>3</sup> which led to, among other things, Mr Tesoriero executing standstill agreements in respect of the Maia debt,<sup>4</sup> and ultimately entering into a personal guarantee for the payment obligations of FG, FE and FGFS in connection with the Maia debt owed by the end-customers.<sup>5</sup>
9. Westpac contends that Mr Tesoriero gave the guarantee to Maia because he was aware that Maia had serious concerns with the circumstances of its arrangements with FG, FE and FGFS leading it to demand repayment of the amounts owing by end-customers, that there were some aspects of the arrangements concerning Maia which were not genuine, and Mr Tesoriero was concerned about potential repercussions for him if those matters were exposed. Westpac relies on these matters, including the execution of the guarantee, as demonstrating Mr Tesoriero's knowledge of the Scheme. Westpac's primary case concerning Mr Tesoriero is that he devised and implemented the Scheme with Mr Papas, but its alternative case pleaded at 2FASOC [1905] and as particularised with respect to [1907] and [1908] is that Mr Tesoriero knew circumstances which would have disclosed to an honest and reasonable person in his position that amounts paid to FGFS were dishonestly obtained. These circumstances included that Maia had demanded repayment

<sup>2</sup> See [MCN.0001.0003.0107](#), [MCN.0001.0003.0642](#) and [MCN.0001.0003.0667](#).

<sup>3</sup> See for example [SEC.5000.0023.1003](#); [SEC.5000.0023.1005](#); [SEC.5000.0023.1009](#); [MCN.0001.0003.0729](#); [MCN.0001.0003.0731](#); [MCN.0001.0003.0072](#) and [MCN.0001.0003.0252](#)

<sup>4</sup> See [SEC.5000.0033.5218](#); [MCN.0001.0003.0801](#); [MCN.0001.0003.0802](#); [FOG.1000.0008.2622](#); [FOG.1000.0008.2623](#) and further [MCN.0001.0003.0601](#)

<sup>5</sup> See [MCN.0001.0003.0607](#).

of amounts owing to it, Forum entities repaying those amounts, and following that, a sudden unexplained influx of funds into Forum entities.

*Entities in external administration*

10. Further to paragraph [17] of the Opening Submissions, a number of additional corporate respondents are now in external administration.
11. On 2 November 2022 orders were made for the winding up of 64-66 Berkeley St; 23 Margaret St; Canner; 9 Gregory St; 286 Carlisle St; TIG; 193 Carlisle St; and 8-12 Natalia Ave. The Liquidators were appointed as the joint and several liquidators of each of those entities. The Court has granted Westpac leave to proceed against the additional companies in liquidation: see orders made by Cheeseman J on 23 November 2022.
12. On 17 November 2022, Matthew Byrnes and Phillip Campbell-Wilson were appointed as joint and several voluntary administrators of 14 Kirwin Rd; 123 High St; 160 Murray Valley Hwy; 31 Ellerman St; 4 Cowslip St; 55 Nolan St; 89 Betka Rd; 9 Main Street and 275 High St (**VA Companies**).
13. The voluntary administrators of the VA Companies have provided consent, pursuant to s 440D(1) of the *Corporations Act 2001* (Cth), for Westpac to continue its claims against the VA Companies.<sup>6</sup>
14. Given these additional external administrations, Westpac intends to file and serve an amended s 50 Corporate Summary<sup>7</sup> that reflects these changes.

*Appearance by Mr Giamouridis*

15. Mr Giamouridis has filed an appearance in the Westpac Proceeding and has indicated his intention to defend the claims against him: cf Opening Submissions [14(a)].
16. A timetable has been set for the filing of a defence and evidence in relation to the claim against Mr Giamouridis. That timetable requires Mr Giamouridis to file his defence and evidence in January 2023.

**Proceeding in the absence of a respondent**

17. Westpac anticipates that certain of the respondents may not appear at the final hearing of the Westpac Proceeding. Should that be the case, in relation to the respondents that have

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<sup>6</sup> See letter from Michael Sloan and Jake Overend of Ashurst dated 23 November 2022.

<sup>7</sup> See paragraph [6] and [22] of the Opening Submissions.

been served and that have appeared at various points in the Westpac Proceeding,<sup>8</sup> Westpac will seek orders that the hearing proceed pursuant to rule 30.21(1)(b)(i) of the *Federal Court Rules 2011* (Cth) (FCR).

18. Rule 30.21(1)(b)(i) of the FCR provides that, if a respondent is absent when a proceeding is called for trial, another party may apply to the Court for an order that the hearing proceed generally or in relation to a particular aspect of the application. Should such an order be made, the applicants may prove their claim so far as the burden of proof lies upon them and once having proved their claims, the applicants will be entitled to the relief claimed and such other relief as is consistent with the case made: see *Mayfair Wealth Partners Pty Ltd v Australian Securities and Investments Commission* [2022] FCAFC 170 at [12] per Jagot, O’Bryan and Cheeseman JJ. As noted by the Full Court in *Mayfair*, this approach is consistent with the reasoning of the High Court of Australia in *Banque Commerciale SA, En Liquidation v Akhil Holdings Ltd* [1990] HCA 11; (1990) 169 CLR 279. (See also *Cathro (liquidator), in the matter of Petsamo No 14 Pty Ltd (in liq) v Thomassian* [2022] FCA 399 see at [40]-[48] per Markovic J for a recent application of this Rule.)
19. The status of service on, and the appearances of, various respondents in the Westpac Proceeding are set out in the table at Annexure E to these submissions.<sup>9</sup> Affidavits of service will be filed with the Court prior to the commencement of the final hearing.
20. As can be seen in that table:
  - a. Mr Papas has appeared in the Westpac Proceeding. As set out in [6] of the Opening Submissions, Mr Papas absconded to Greece at the time that the fraud was detected;
  - b. Ms Agostino, the domestic partner of Mr Papas, has filed an appearance and a defence in the Westpac Proceeding and it is understood that she too is located in Greece: see [14] of the Opening Submissions; and
  - c. Mr Bouchahine has also filed an appearance and a defence in the Westpac Proceeding.

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<sup>8</sup> As to which, see Annexure E to these submissions which sets out the service and appearance of the various respondents

<sup>9</sup> Noting the Opening Submissions refer to Annexures A to D.

21. Should Mr Papas, Ms Agostino and Mr Bouchahine fail to appear at the final hearing, Westpac intends to seek orders, pursuant to rule 30.21(1)(b)(i) of the FCR, for the claims against each of those respondents to proceed generally. Should Westpac prove its claims against each of them, it will press for the relief claimed and such other relief as is consistent with the case made.

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6 December 2022

Counsel for the applicants

**Annexure E: Schedule of Respondents**

<b>Respondent (xR)</b>	<b>Appearance</b>	<b>Comments</b>
Individuals		
Mr Papas (2R)	Appearance filed 1 July 2021 Rocco Panetta (Panetta Lawyers).  Notice of ceasing to act filed by Mr Panetta on 27 September 2021.	Mr Papas has appeared in the Westpac Proceeding and as set out in [7] of the Opening Submissions, Mr Papas has absconded to Greece.  He has been served with the pleadings and evidence. Mr Papas has not filed a defence or any evidence.  He has been notified of the final hearing dates and of Westpac's intention to proceed against him in his absence pursuant to rule 30.21 of the FCR.
Mr Tesoriero (3R)	Appearance filed 9 July 2021.  Notice of acting – change of lawyer filed 10 August 2022: Nigel Evans (Aptum Legal).  Amended defence filed 31 October 2022.	Mr Tesoriero has filed an appearance and defence.  Despite orders made by Thawley J on 28 September 2022, Mr Tesoriero has not filed or served any affidavit or other evidence.
Mr Tesoriero Snr (45R)	Appearance filed 1 February 2022.  Notice of acting – change of lawyer filed 16 August 2022: Nigel Evans (Aptum Legal).  Amended Defence filed 31 October 2022.  Evidence filed 22 November 2022.	Mr Tesoriero Snr has filed an amended defence and affidavit evidence.
Mr Bouchahine (46R)	Appearance filed 2 December 2021: Elias Tabchouri (Macquarie Law Group).  Defence filed 7 February 2022.  Notice of ceasing to act filed 15 September 2022.	Mr Bouchahine has appeared and filed a defence in the Westpac Proceeding. He has not filed any evidence.  He has been notified of the final hearing dates and of Westpac's intention to proceed against him in his absence pursuant to rule 30.21 of the FCR.
Ms Agostino (47R)	Appearance filed 1 February 2022: Robert Ishak (William Roberts Lawyers).	As set out in [14] of the Opening Submissions, Ms Agostino has appeared and filed a defence in the Westpac Proceeding.



Respondent (xR)	Appearance	Comments
	Defence filed 4 May 2022.  Notice of Ceasing to Act filed 9 August 2022.	She has been notified of the final hearing dates and of Westpac's intention to proceed against her in her absence pursuant to rule 30.21 of the FCR.
Anastasios Giamouridis (29R)	15 September 2022: George Anton (GA Lawyers).  Defence to be filed by 5 January 2023.	Mr Giamouridis has filed an appearance and has been provided with additional time in which to file a defence: see orders 23 November 2022.
Mr Constantinidis (44R)	In principle settlement.	Orders anticipated to be filed prior to 6 February 2023.
<b>Companies</b>		
1160 Glen Huntley Rd (14R)	Appearance filed 9 March 2022.  Notice of acting – change of lawyer filed 10 August 2022: Nigel Evans (Aptum Legal).	Defence filed 20 April 2022.  Aptum Legal email of 31 October 2022 said an amended consolidated defence was to be filed however none was filed.
Mangusta (39R)	Appearance filed 6 May 2022.  Notice of acting – change of lawyer filed 15 August 2022: Nigel Evans (Aptum Legal).	Defence filed 16 June 2022.  Aptum Legal email of 31 October 2022 said an amended consolidated defence was to be filed however none was filed.
Companies in Liquidation: <ul style="list-style-type: none"> <li>• Forum Finance (1R);</li> <li>• FGFS (4R);</li> <li>• FG (5R);</li> <li>• FE (6R);</li> <li>• FEA (7R);</li> <li>• 64-66 Berkeley St (8R);</li> <li>• 14 James St (9R);</li> <li>• 26 Edmonstone Road (10R);</li> <li>• 5 Bulkara St (11R);</li> <li>• 6 Bulkara St (12R);</li> <li>• 23 Margaret St (13R);</li> <li>• Canner (16R);</li> <li>• 9 Gregory Street (23R);</li> <li>• 286 Carlisle Street (25R);</li> <li>• Palante (28R);</li> <li>• TFGC (30R);</li> <li>• Iugis (31R);</li> </ul>	Notice of appearance: various dates filed by Christopher Prestwich (Allens) on behalf of the joint and several Liquidators, Jason Preston and Jason Ireland.	See Opening Submissions at [9]-[12].  Leave to proceed against each of the companies in Liquidation has been granted to Westpac: see orders 15 July 2021; 22 September 2021 and 23 November 2022.  Further each of the companies in liquidation has been excused from the requirement to file a defence in the Westpac Proceeding: see orders 30 July 2021, 22 September 2021; 10 March 2022; and 23 November 2022.

Respondent (xR)	Appearance	Comments
<ul style="list-style-type: none"> <li>Spartan (36R);</li> <li>Intrashield (37R);</li> <li>TIG (38R);</li> <li>193 Carlisle Street (40R);</li> <li>8-12 Natalia Ave (41R);</li> </ul>		
<p>Companies in administration:</p> <ul style="list-style-type: none"> <li>14 Kirwin Rd (15R)</li> <li>123 High Street (17R);</li> <li>160 Murray Valley Hwy (18R);</li> <li>31 Ellerman St (19R);</li> <li>4 Cowslip Street (20R);</li> <li>55 Nolan Street (21R);</li> <li>89 Betka Rd (22R);</li> <li>9 Main Street (24R);</li> <li>275 High Street (26R).</li> </ul>	<p>Notices of appearance were filed on 9 March 2022: Sazz Nasimi (Madgwicks).</p> <p>Notice of acting – change of lawyer filed 10 August 2022: Nigel Evans (Aptum Legal).</p> <p>Administrators appointed 17 November 2022.</p>	Administrators have given consent for the Westpac Proceeding against each of these entities to continue.
<p>Greek companies controlled by Mr Papas:</p> <ul style="list-style-type: none"> <li>Mazcon (27R);</li> <li>Iugis Greece (42R); and</li> <li>Iugis Energy SA (43R).</li> </ul>	Leave to serve out 7 December 2021.	<p>Mazcon, Iugis Greece and Iugis Energy SA are companies owned and controlled by Mr Papas: Opening Submissions at [12].</p> <p>Service on these entities will be addressed at the final hearing.</p>
Iugis UK (32R)	Leave to serve out granted 7 December 2021.	<p>Served with 4FAOA and 2FASOC on 9 May 2022.</p> <p>Company being wound up in the UK.</p>
<p>Overseas companies deregistered:</p> <ul style="list-style-type: none"> <li>Iugis Holdings UK (33R);</li> <li>Iugis GFS UK (34R); and</li> <li>Iugis Finance UK (35R).</li> </ul>	<p>Leave to serve out: 7 December 2021.</p> <p>Companies deregistered.</p>	Opening Submissions at [13]; companies relevant to the operation of the Scheme, Westpac's claims against these companies are not pressed.
<ul style="list-style-type: none"> <li>Theion IKE (49R)</li> <li>D&amp;D Group (48R)</li> </ul>	Leave to serve out: 7 December 2021.	<p>Theion IKE was served on 17 August 2022.</p> <p>Service on D&amp;D Group will be addressed at the final hearing.</p>