

**SMBC Leasing and Finance, Inc. v Forum Enviro (Aust) Pty Ltd (in liq) & Others**

**Applicant's supplementary outline of opening submissions for final hearing**

1. On 5 December 2022, SMBC filed and served its outline of opening submissions for the final hearing (**Opening Submissions**).<sup>1</sup> By these submissions, SMBC supplements and updates its Opening Submissions in order to address procedural events which have occurred since their filing. SMBC otherwise relies on the Opening Submissions.
2. Capitalised terms used here are as defined in the Opening Submissions.

**A. Events since opening submissions**

*Amendment to pleadings to add three new respondents*

3. On 22 December 2022, pursuant to leave of the Court, SMBC filed a Second Further Amended Originating Application and an Addendum to the Amended Statement of Claim. The amendments added claims against three additional corporate respondents, each of which is in liquidation under the control of the Liquidators, being:
  - (a) 8-12 Natalia Avenue Oakleigh Pty Ltd (in liquidation) (**8-12 Natalia Ave**), Twenty-Sixth Respondent;
  - (b) Palante Pty Ltd (in liquidation) (**Palante**), Twenty-Seventh Respondent; and
  - (c) Aramia Holdings Pty Ltd (in liquidation) (**Aramia**), Twenty-Eighth Respondent.
4. An updated Receipts Table appears as Annexure A to these submissions, showing the amounts received by each respondent in the SMBC Proceeding, including the three new respondents.

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<sup>1</sup> B.102 - B.147; MIN.5000.0019.0017.

5. Of the three new respondents, Palante and Aramia are Papas Related Entities and are alleged to have knowledge of the fraud; 8-12 Natalia Ave is a Tesoriero Related Entity and is sued in its capacity as a recipient only.
6. By way of update to paragraph 14 of the Opening Submissions, there remains substantial overlap between the respondents to the SMBC Proceeding and the respondents to the Westpac Proceeding. There are five corporate respondents sued by SMBC that are not sued by Westpac: Forum Fleet, Imagetec FS, Imagetec Solutions, Iugis Waste and Aramia.

**B. Leave to proceed against additional companies in liquidation**

7. Also on 22 December 2022, this Court granted leave to SMBC to proceed against the following companies in liquidation: 23 Margaret St, 286 Carlisle St, 64-66 Berkeley St, 8-12 Natalia Ave, Palante and Aramia (being the twenty-third to twenty-eighth respondents).

**C. Service on and appearance of respondents**

8. The status of service on, and the appearances of, the 28 respondents to the SMBC Proceeding is set out in the table at Annexure B to these submissions. An affidavit of service is included in the Court Book.<sup>2</sup>
9. An affidavit has also been filed with the Court establishing service of SMBC's section 50 summaries on Mr Papas.<sup>3</sup>
10. It remains the case (as stated in paragraph 13 of the Opening Submissions) that none of the respondents in the SMBC Proceeding is actively defending the claims against it.

**D. Proceeding in the absence of a respondent**

11. As is the case for Westpac in the Westpac Proceeding, SMBC anticipates that certain of the respondents may not appear at the final hearing of the SMBC Proceeding. Should that be the case, in relation to the respondents that have been served and that have appeared at various points in the SMBC Proceeding, SMBC intends to seek

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<sup>2</sup> Affidavit of Maria Yiasemides sworn 25 January 2023 (D.VI.193 - D.VI.203; SMB.500.002.0001) (Service Affidavit).

<sup>3</sup> See Supplementary Affidavit of Maria Yiasemides sworn 3 February 2023 (not yet in Court Book).

orders that the hearing proceed pursuant to r 30.21(1)(b)(i) of the Federal Court Rules 2011 (Cth) (FCR).

12. The principles regarding proceeding in the absence of a respondent are set out in Westpac's Supplementary Submissions at [18].<sup>4</sup>

**E. Iugus Greece**

13. Iugis Greece (the seventeenth respondent) has been placed into liquidation in Greece with Mr Papas as its liquidator.<sup>5</sup> In the circumstances, SMBC does not wish to press its claims against Iugis Greece. Accordingly, SMBC seeks leave under FCR, r 26.12 to discontinue the proceeding so far as it concerns Iugis Greece.
14. Leave to discontinue will generally be granted so that the applicant for leave does not have to litigate against its will, provided that the discontinuance does not cause injustice to the respondent and is proper in all the circumstances: *Passport International Productions Inc v Caisley t/as RBC Entertainment* [2006] FCA 226; BC200601360 at [6] per Emmett J. The Court may impose conditions on the grant of leave, a common condition being that the applicant pay the respondent's costs of defending the proceedings.
15. SMBC attempted to serve Iugis Greece between August and November 2022, but the attempt was unsuccessful.<sup>6</sup> Iugis Greece has played no part in the proceedings and will have incurred no costs in defending the proceedings.
16. It is submitted that the appropriate order is that SMBC have leave to discontinue the proceedings against Iugis Greece without further conditions.

**F. Iugis Holdings UK**

17. Iugis Holdings UK (the fifteenth respondent) was served,<sup>7</sup> but dissolved in the UK on 24 May 2022.<sup>8</sup> Accordingly, the claim against it cannot now proceed.

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<sup>4</sup> B.97; MIN.5000.0019.0007 at 0012.

<sup>5</sup> Service Affidavit, [27].

<sup>6</sup> Service Affidavit, [23]-[24].

<sup>7</sup> Service Affidavit, [32].

<sup>8</sup> Westpac s 50 Corporate Summary: Directorships, Shareholdings and Trusts, line 37 (F.I.92-F.I.93, MIN.5000.0006.1747 at 1762-1763).

**G. Mazcon and Iugis Energy**

18. SMBC seeks to have the proceedings adjourned for case management on a future date so far as they concern Mazcon and Iugis Energy.
19. Mazcon (the nineteenth respondent) and Iugis Energy (the eighteenth respondent) are companies incorporated in Greece.
20. On 23 May 2022, this Court granted SMBC leave pursuant to r 10.43(2) of the FCR to serve the Further Amended Originating Application (**FAOA**) and the Amended Statement of Claim (**ASOC**) on Mazcon and Iugis Energy in Greece in accordance with the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters done at The Hague on 15 November 1965 (**Hague Convention**). Service under the Hague Convention in Greece requires that the Federal Court Registry send the documents to the designated Central Authority in Greece, being the Hellenic Ministry of Justice.
21. After obtaining Greek translations of the FAOA and the ASOC, SMBC attempted service between August and November 2022.<sup>9</sup> However, those attempts were unsuccessful: on 24 November 2022, the Federal Court Registry provided to SMBC with a certificate of no service in respect of Mazcon.<sup>10</sup> On 29 November 2022, a certificate of no service in respect of Iugis Energy was provided.<sup>11</sup>
22. On 23 December 2022, this Court amended the service out orders, granting leave to SMBC to serve the FAOA and ASOC on Mazcon and Iugis Energy at the Greek addresses of the directors of each company.
23. On 25 January 2023, the documents and their translations were again provided to the Federal Court Registry for postage to the Hellenic Ministry of Justice in Greece, for service.<sup>12</sup>
24. SMBC awaits the outcome of this second attempt at service.

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<sup>9</sup> Service Affidavit, [23].

<sup>10</sup> Service Affidavit, [24].

<sup>11</sup> Service Affidavit, [24].

<sup>12</sup> Service Affidavit, [26].

25. As SMBC is now re-attempting service on Mazcon and Iugis Energy, it is submitted that the appropriate course is to adjourn the proceeding as against Mazcon and Iugis Energy to a future date for case management, pending service being achieved.
26. It should be noted that Westpac sues both Mazcon and Iugis Energy in the Westpac Proceeding, bringing substantially similar claims to those which SMBC brings in the SMBC Proceeding.

**M Izzo SC**  
Eleven Wentworth  
[mizzo@elevenwentworth.com](mailto:mizzo@elevenwentworth.com)  
Ph: 9221 1977

**E L Beechey**  
[beechey@newchambers.com.au](mailto:beechey@newchambers.com.au)  
Ph: 9151 2021

6 February 2023

## Annexure A (updated) - Payments to, or on behalf of, each Respondent (Receipts Table)

This is an updated version of Annexure A to the Opening Submissions. It has been updated to include a respondent number column and the three additional respondents added on 22 December 2022.

Except where footnoted, the figures correspond with those in Westpac's s 50 summaries of payments to, and on behalf of, respondents, or where there is no such s 50 summary, with the Liquidator's Alternative Tracing Model results set out in JP-18.

Respondent	Respondent number	Total Amount	Amount of SMBC Funds
5 Bulkara St	21st	\$3,487,428.13	\$444,268.83
6 Bulkara St	22nd	\$4,809,830.00	\$1,438,895.72
8-12 Natalia Ave	26th	\$2,885,886.02	\$533,938.85
23 Margaret St	23rd	\$878,355.32	\$187,348.86
26 Edmonstone Rd	20th	\$2,023,347.36	\$141,973.32
64-66 Berkeley St	25th	\$1,774,931.12	\$1,011,742.93
286 Carlisle St	24th	\$1,470,499.84	\$539,705.74
Aramia Holdings	28th	\$461,000.00 <sup>13</sup>	\$101,914.00 <sup>14</sup>
Forum Finance	6th	\$3,758,234.76	\$747,219.96
Forum Fleet	8th	\$290,000	\$190,000
FGFS	4th	\$2,286,387.22	\$261,700.03
FG	5th	\$150,656,759.23	\$27,440,745.59
Imagetec FS	9th	\$0	\$0
Imagetec Solutions	10th	\$2,897,330	\$1,385,211
Intrashield	11th	\$1,227,216.34	\$50,822.69
Iugis UK	16th	\$2,343,417.04	\$666,690.08
Iugis Energy Greece	18th	\$558,421.82	\$437,226.15
Iugis Greece	17th	\$770,305.38	\$291,617.73
Iugis Holdings UK	15th	\$4,285,855.56	\$1,227,033.75
Iugis Waste	14th	\$1,153,000	\$1,010,820
Iugis	13th	\$19,626,861.58	\$5,112,760.03
Mazcon	19th	\$14,264,185.26	\$5,630,923.04

<sup>13</sup> See Alternative Tracing Model (JP-17), Summary – Detailed, Cell K100.

<sup>14</sup> See Alternative Tracing Model (JP-17), Summary – Detailed, Cell H100.

Palante	27th	\$3,168,587.66	\$357,251.50
Mr Papas	2nd	\$3,503,875.10	\$284,742.91
Spartan	12th	\$1,794,583.23	\$284,868.53
TFGC	7th	\$11,102,895.52	\$3,416,089.07
<b>TOTAL</b>		<b>\$241,479,193.49</b>	<b>\$53,195,510.31</b>

## Annexure B – Schedule of service and appearance on respondents

Respondent		Appearance	Comments
Mr Papas	2nd	Appearance filed 15 July 2021 by Rocco Panetta (Panetta Lawyers).  Notice of ceasing to act filed by Mr Panetta on 30 September 2021.	Mr Papas absconded to Greece prior to the SMBC Proceedings. He initially appeared in the SMBC Proceeding by Counsel and solicitor but is no longer taking an active role. <sup>15</sup>  He has been served with the pleadings and evidence <sup>16</sup> and with SMBC's s 50 summaries <sup>17</sup> and Westpac's s 50 summaries. <sup>18</sup>  He has been notified of the final hearing dates. <sup>19</sup>
Australian companies in liquidation: FEA FE FGFS FG Forum Finance TFGC Forum Fleet Imagetec FS Imagetec Solutions Intrashield Spartan Iugis Iugis Waste 26 Edmonstone Rd 5 Bulkara St 6 Bulkara St 23 Margaret St 286 Carlisle St	1st 3rd 4th 5th 6th 7th 8th 9th 10th 11th 12th 13th 14th 20th 21st 22nd 23rd 24th	Notices of appearance filed on various dates by Christopher Prestwich (Allens) on behalf of the joint and several Liquidators, Jason Preston and Jason Ireland.	Leave to proceed against each of the companies in liquidation has been granted to SMBC. <sup>20</sup>  Each of the companies in liquidation has been excused from the requirement to file a defence in the SMBC Proceeding. <sup>21</sup>

<sup>15</sup> Opening Submissions, [6].

<sup>16</sup> Service Affidavit, [8]-[19].

<sup>17</sup> Supplementary Affidavit of Maria Yiasemides sworn 3 February 2023, [5] (not yet in Court Book).

<sup>18</sup> Affidavit of Caitlin Maria Murray sworn 2 February 2023, [55]-[60] (D.VII.11; MIN.5000.0030.0092 at 0102).

<sup>19</sup> Affidavit of Caitlin Maria Murray sworn 2 February 2023, [53]-[54] (D.VII.10; MIN.5000.0030.0092 at 0101).

<sup>20</sup> 12 August 2021; 12 November 2021. Order 15; 22 December 2022, Order 3 (copies of these orders are in Part A.VI. of the Court Book).

<sup>21</sup> 12 August 2021; 12 November 2021. Order 16; 22 December 2022, Order 4.



64-66 Berkeley St 8-12 Natalia Ave Palante Aramia	25th 26th 27th 28th		
Iugis Holdings UK	15th	No appearance.  Dissolved UK company. <sup>22</sup>	Controlled by Mr Papas. <sup>23</sup>  In light of the dissolution, the claim against Iugis Holdings UK cannot proceed.
Iugis UK (in liq)	16th	No appearance.  UK company, in liquidation. <sup>24</sup>	Controlled by Mr Papas. <sup>25</sup>  Leave to serve out granted 12 November 2021.  Served with Further Amended Originating Application and Amended Statement of Claim on 1 December 2021. <sup>26</sup>
Iugis Greece	17th	No appearance  Greek company, in liquidation with Mr Papas as the liquidator. <sup>27</sup>	Controlled by Mr Papas. <sup>28</sup>  Leave to serve out granted 12 November 2021 and amended 23 May 2022.  Service attempted but unsuccessful. <sup>29</sup>  In light of the liquidation and identity of the liquidator, SMBC seeks leave to discontinue the proceedings against Iugis Greece.
Iugis Energy Greece	18th	No appearance, not yet served.  Greek company.	Controlled by Mr Papas. <sup>30</sup>

<sup>22</sup> Westpac s 50 Corporate Summary: Directorships, Shareholdings and Trusts, line 37 (F.I.92-F.I.93, MIN.5000.0006.1747 at 1762-1763).

<sup>23</sup> Opening Submissions, [8(a)].

<sup>24</sup> Westpac s 50 Corporate Summary: Directorships, Shareholdings and Trusts, line 36 (F.I.92, MIN.5000.0006.1747 at 1763).

<sup>25</sup> Opening Submissions, [8(b)].

<sup>26</sup> Service Affidavit, [32].

<sup>27</sup> Service Affidavit, [27].

<sup>28</sup> Opening Submissions, [8(c)].

<sup>29</sup> Service Affidavit, [24].

<sup>30</sup> Opening Submissions, [8(d)].

			<p>Leave to serve out granted 12 November 2021 and amended 23 May 2022.</p> <p>Service attempted but unsuccessful.</p> <p>SMBC seeks orders that the proceedings as against Mazcon and Iugis Energy be adjourned pending service in Greece.</p>
Mazcon	19th	No appearance, not yet served	<p>Controlled by Mr Papas.<sup>31</sup></p> <p>Leave to serve out granted 12 November 2021 and amended 23 May 2022.</p> <p>Service attempted but unsuccessful.</p> <p>SMBC seeks orders that the proceedings as against Mazcon and Iugis Energy be adjourned pending service in Greece.</p>

<sup>31</sup> Opening Submissions at [8 (e)].