

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 7/02/2022 9:53:59 PM AEDT and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

Details of Filing

Document Lodged: Affidavit - Form 59 - Rule 29.02(1)
File Number: NSD616/2021
File Title: WESTPAC BANKING CORPORATION ABN 33 007 457 141 & ANOR v
FORUM FINANCE PTY LIMITED (IN LIQUIDATION) ACN 153 301 172
& ORS
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF
AUSTRALIA



Sia Lagos

Dated: 9/02/2022 9:08:07 AM AEDT

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.



Affidavit

No. NSD616/2021

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

Westpac Banking Corporation ABN 33 007 457 141 and another named in the Schedule

Applicants

Forum Finance Pty Limited ACN 153 301 172 others named in the Schedule

Respondents

Affidavit of: Caitlin Maria Murray
Address: Level 40, Governor Macquarie Tower, 1 Farrer Place, Sydney NSW 2000
Occupation: Solicitor
Date: 7 February 2022

Contents

Document number	Details	Paragraph	Page
1.	Affidavit of Caitlin Maria Murray sworn on 7 February 2022	[1] – [27]	1-6
2.	Exhibit CMM-22, being a paginated bundle of documents	[3]	1-184

I, Caitlin Maria Murray of Level 40, Governor Macquarie Tower, 1 Farrer Place, Sydney NSW 2000, Solicitor, say on oath:

1. I am a partner of the firm of solicitors, MinterEllison and the solicitor for the first applicant, Westpac Banking Corporation (**WBC**) and the second applicant Westpac New Zealand Limited (**WNZL**) (together, **Westpac**).
2. This affidavit is sworn in support of Westpac's interlocutory application dated 7 February 2022 which seeks orders to enforce as against the third respondent, Mr Tesoriero and the thirteenth

Filed on behalf of (name & role of party) Westpac Banking Corporation and Westpac New Zealand Limited, applicants
Prepared by (name of person/lawyer) Caitlin Murray
Law firm (if applicable) MinterEllison
Tel (02) 9921 8888 Fax 02 9921 8123
Email caitlin.murray@minterellison.com
Address for service Governor Macquarie Tower, 1 Farrer Place, SYDNEY NSW 2000
(include state and postcode) Our reference: CMM:AGS:1353397

Version 3 form approved 02/05/2019

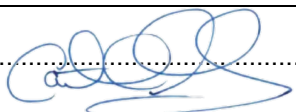
respondent, 23 Margaret Street Pty Limited (**23 Margaret St**) a deed titled "Sale Process Deed" executed by Mr Tesoriero and 23 Margaret St on or around 2 September 2021 (**Deed**) in settlement of an interlocutory application filed by Westpac on 25 August 2021 (**25 August Interlocutory Application**).

3. Exhibited to me at the time of swearing this affidavit is a paginated bundle of documents marked 'Exhibit CMM-22' (**CMM-22**) Throughout this affidavit I make reference to documents which appear at CMM-22.

25 August Interlocutory Application

4. I refer to my earlier affidavit sworn in these proceedings on 25 August 2021 (**My 25 August Affidavit**) in support of the 25 August Interlocutory Application.
5. The 25 August Interlocutory Application sought various orders, including freezing orders against 23 Margaret St, or, in the alternative, the appointment of receivers and managers to the property owned by 23 Margaret St, being the property with folio identifier 106/1021924, known as 23 Margaret Street, Rozelle, NSW 2039 (**Property**).
6. On 25 August 2021 Lee J granted Westpac leave to file the 25 August Interlocutory Application and My 25 August Affidavit with short service. That application was returnable before his Honour on 27 August 2021.
7. Following service of that application, Mr Tesoriero and 23 Margaret St (together, the **Tesoriero Parties**) entered into negotiations with Westpac for the resolution of the 25 August Interlocutory Application, which resulted in an adjournment of the 25 August Interlocutory Application when that application was before the Court on 27 August 2021.
8. A copy of the transcript of the hearing on 27 August 2021 is at pages 1 to 9 of CMM-22.
9. A copy of the orders made on 27 August 2021 is at pages 10 to 23 of CMM-22.
10. In the period following the directions hearing on 27 August 2021 until 2 September 2021, Westpac and the Tesoriero Parties (via their respective solicitors) corresponded regarding the resolution of the 25 August Interlocutory Application to the extent that it affected the Property. A copy of the chain of correspondence between MinterEllison and Fortis Law (the then solicitors for the Tesoriero Parties) in the period 27 August 2021 to 3:17pm on 2 September 2021 is at pages 24 to 30 of CMM-22.
11. At pages 31 to 39 of CMM-22 is an email chain containing numerous emails exchanged between Mr Sommer and Mr Nehme (to which I was copied) after the last email referred to in paragraph 10 above on 2 September 2021 (without their attachments).
12. At page 40 to 56 of CMM-22 is a copy of an email from Mr Nehme to Mr Sommer sent at 9:15pm on 2 September 2021 attaching a copy of the Deed executed by the Tesoriero Parties.

Signed:



Taken by:



13. At pages 57 to 74 of CMM-22 is a copy of an email from Mr Sommer to Mr Nehme sent at 9:27am on 3 September 2021 attaching Westpac's executed version of the Deed.
14. In light of the agreement reached by the parties and reflected in the Deed, Westpac, in accordance with the terms of the Deed, agreed to consent orders dismissing the 25 August Interlocutory Application.
15. The proceedings were listed again on 3 September 2021. A copy of the transcript of the hearing before his Honour on that date is at pages 75 to 87 of CMM-22. A copy of the orders dismissing the 25 August Interlocutory Application is at pages 88 to 90 of CMM-22.
16. Following the appointment of Madgwicks as solicitors for the Tesoriero Parties, there have been various items of correspondence relating to the sale of the Property and the Deed, namely:
 - (a) an email sent by Mr Sommer to Mr Nasimi on 24 September 2021, a copy of which is at pages 91 to 104 of CMM-22;
 - (b) Mr Nasimi's response dated 26 September 2021 is at pages 105 to 120 of CMM-22;
 - (c) a letter sent by Mr Sommer to Mr Nasimi dated 28 September 2021, a copy of which is at pages 121 to 122 of CMM-22;
 - (d) a follow-up email sent by Mr Sommer on 21 October 2021, a copy of which is at pages 123 to 137 of CMM-22;
 - (e) a letter sent by Mr Sommer to Mr Nasimi on 28 October 2021, a copy of which is at pages 138 to 139 of CMM-22;
 - (f) an email and attached letter sent by Mr Sommer on 2 November 2021, a copy of which is at tab 140 to 143 of CMM-22; and
 - (g) a follow-up email sent by Mr Sommer on 8 November 2021, a copy of which is at pages 144 to 145 of CMM-22.
17. No substantive response was received by MinterEllison from Madgwicks regarding the status of the sale of the Property in accordance with the Deed following the above correspondence by the end of 2021.
18. On or around 10 January 2022 I became aware through an article published in the Sydney Morning Herald newspaper that the Property had been sold on 29 December 2021. A copy of the article I read is at pages 146 to 149 of CMM-22.
19. On 18 January 2022, I caused a letter to be sent by MinterEllison to Mr Nasimi, a copy of which is at pages 150 to 151 of CMM-22. No response was received to this letter.
20. A follow-up email was sent by Alana Galasso, a solicitor employed by MinterEllison, to Ms Lawrence of Madgwicks on 21 January 2022, to which I was copied. A copy of the email is at

Signed: 

Taken by: 

pages 152 to 153 of CMM-22. I am informed by Ms Galasso and believe that she did not receive a response to this email.

21. At 8.21am on 31 January 2022 I received an email from Andy Habib from Thornton King, who indicated that he was acting for 23 Margaret St in connection with the sale of the Property. In his email, Mr Habib indicated that he was instructed that I had *"been liaising with [his] clients [sic] lawyers in Melbourne re the removal of [Westpac's] caveat"* and asked for a status upon on the removal of the caveat. A copy of this email and my reply sent at 11.25am is at pages 154 to 155 of CMM-22.
22. Mr Habib responded to my email and provided a copy of the contract for sale at 11.33am on 31 January 2022. A copy of Mr Habib's email (without the attachment) is at pages 156 to 158 of CMM-22.
23. At 5.27pm on 31 January 2022 I received an email attaching a letter from Ms Lawrence from Madgwicks. As the attachments had been inadvertently omitted, the letter and its attachments were re-sent to me at 6.39pm that same day (**31 January Madgwicks Letter**). A copy of the letter and its attachments (excluding the copy of the contract of sale provided, which has not been stamped) are at pages 159 to 177 of CMM-22.
24. At page 178 of CMM-22 is an email sent by Andrew Clarke, a solicitor employed by MinterEllison to Ms Lawrence at 11.33am on 2 February 2022 in response to the 31 January Madgwicks Letter.
25. At pages 179 to 184 of CMM-22 are copies of the following correspondence dated 4 February 2022:
 - (a) an email from Melissa Passarelli of Madgwicks to Andrew Clarke and attached letter sent at 7:36am; and
 - (b) a letter which I sent to Mr Nasimi at 3.05pm.
26. As at the time of swearing this affidavit, I have not received any response to the letter I sent at 3:05pm on 4 February 2022.
27. As matters stand, settlement of the sale is due to occur on 9 February 2022, and the solicitors for the Tesoriero Parties have indicated that they are of the view that the Deed is not binding.

Signed: 

Taken by: 

Sworn by the deponent
at Sydney
in New South Wales
on 7 February 2022

)
)
)
)
)

Signature of deponent

Before me:

Signature of witness
Simon Henry Brandis
Solicitor

As a witness, I certify the following matters concerning the person who made this affidavit (**deponent**):

1. This affidavit is witnessed over audio visual link in accordance with Part 2B of the *Electronic Transactions Act 2000* (NSW).
2. I saw the face of the deponent.
3. I observed the deponent signing a copy of this affidavit in real time.
4. I attest or otherwise confirm witnessing the deponent's signature by signing this affidavit.
5. I am reasonably satisfied this affidavit signed by me is a copy of the affidavit signed by the deponent.
6. I have confirmed the deponent's identity using the following identification document: Driver's License

Signed:

Taken by:

Schedule of Parties

No. NSD616/2021

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

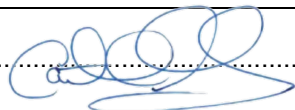
Applicants

First Applicant Westpac Banking Corporation ABN 33 007 457 141
 Second Applicant Westpac New Zealand Limited (company registration number
 company number 1763882)

Respondents

First Respondent Forum Finance Pty Limited (in liquidation) ACN 153 301 172
 Second Respondent: Basile Papadimitriou
 Third Respondent Vincenzo Frank Tesoriero
 Fourth Respondent: Forum Group Financial Services Pty Ltd (provisional liquidators
 appointed) ACN 623 033 705
 Fifth Respondent: Forum Group Pty Ltd (Receivers Appointed) (in liquidation) ACN
 153 336 997
 Sixth Respondent: Forum Enviro Pty Ltd (provisional liquidators appointed)
 ACN 168 709 840
 Seventh Respondent: Forum Enviro (Aust) Pty Ltd (provisional liquidators appointed) ACN
 607 484 364
 Eighth Respondent 64-66 Berkeley St Hawthorn Pty Ltd ACN 643 838 662
 Ninth Respondent 14 James Street Pty Ltd (in liquidation) ACN 638 449 206
 Tenth Respondent 26 Edmonstone Road Pty Ltd (in liquidation) ACN 622 944 129
 Eleventh Respondent 5 Bulkara Street Pty Ltd (in liquidation) ACN 630 982 160
 Twelfth Respondent 6 Bulkara Street Pty Ltd (in liquidation) ACN 639 734 473
 Thirteenth Respondent 23 Margaret Street Pty Ltd ACN 623 715 373
 Fourteenth Respondent 1160 Glen Huntly Road Pty Ltd ACN 639 447 984
 Fifteenth Respondent 14 Kirwin Road Morwell Pty Ltd ACN 641 402 093
 Sixteenth Respondent Canner Investments Pty Ltd ACN 624 176 049
 Seventeenth Respondent 123 High Street Taradale Pty Ltd ACN 639 872 512
 Eighteenth Respondent 160 Murray Valley Hwy Lake Boga Pty Ltd ACN 641 392 921
 Nineteenth Respondent 31 Ellerman Street Dimboola Pty Ltd ACN 641 392 887
 Twentieth Respondent 4 Cowslip Street Violet Town Pty Ltd ACN 639 872 352
 Twenty-First Respondent 55 Nolan Street Maryborough Pty Ltd ACN 641 392 912

Signed:



Taken by:



Twenty-Second Respondent	89 Betka Road Mallacoota Pty Ltd ACN 641 393 179
Twenty-Third Respondent	9 Gregory Street Ouyen Pty Ltd ACN 641 392 707
Twenty-Fourth Respondent	9 Main Street Derrinallum Pty Ltd ACN 639 872 736
Twenty-Fifth Respondent	286 Carlisle Street Pty Limited ACN 610 042 343
Twenty-Sixth Respondent	275 High Street Golden Square Pty Ltd ACN 639 870 545
Twenty-Seventh Respondent	Mazcon Investments Hellas IKE
Twenty-Eighth Respondent	Palante Pty Ltd ACN 135 344 151
Twenty-Ninth Respondent	Anastasios Giamouridis
Thirtieth Respondent	The Forum Group of Companies Pty Ltd (in liquidation) ACN 151 964 626
Thirty-First Respondent	Iugis Pty Ltd (in liquidation) ACN 632 882 243
Thirty-Second Respondent	Iugis (UK) Limited
Thirty-Third Respondent	Iugis Holdings Limited
Thirty-Fourth Respondent	Iugis Global Financial Services Limited
Thirty-Fifth Respondent	Iugis Finance Limited
Thirty-Sixth Respondent	Spartan Consulting Group Pty Ltd (in liquidation) ACN 168 989 544
Thirty-Seventh Respondent	Intrashield Pty Ltd (in liquidation) ACN 133 426 534
Thirty-Eighth Respondent	Tesoriero Investment Group Pty Ltd ACN 161 088 115
Thirty-Ninth Respondent	Mangusta (Vic) Pty Ltd ACN 631 520 682
Fortieth Respondent	193 Carlisle Street Enterprises Pty Ltd ACN 612 615 237
Forty-First Respondent	8-12 Natalia Ave Oakleigh Pty Ltd ACN 643 838 626
Forty-Second Respondent	Iugis Hellas IKE
Forty-Third Respondent	Iugis Energy SA
Forty-Fourth Respondent	Eric Constantinidis
Forty-Fifth Respondent	Giovanni (John) Tesoriero
Forty-Sixth Respondent	Moussa (Tony) Bouchahine
Forty-Seventh Respondent	Louisa Maria Agostino
Forty-Eighth Respondent	D&D Group O.E
Forty-Ninth Respondent	Aromatika Fyta Tsai Olympou Theion Ike