

## NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 14/07/2021 3:53:18 PM AEST 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:	Outline of Submissions
File Number:	NSD616/2021
File Title:	WESTPAC BANKING CORPORATION ABN 33 007 457 141 v FORUM FINANCE PTY LIMITED & ORS
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



A handwritten signature in blue ink that reads 'Sia Lagos'.

Dated: 14/07/2021 3:54:46 PM 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.



Westpac Banking Corporation v Forum Finance Pty Limited (in liquidation) (receivers  
appointed)  
Federal Court of Australia  
NSD616/2021

**OUTLINE OF SUBMISSIONS OF THE FIRST RESPONDENT  
INTERLOCUTORY APPLICATION DATED 12 JULY 2021**

**Introduction**

- 1 By Interlocutory Application dated 12 July 2021, Westpac Banking Corporation (**Westpac**) seeks various orders, including that Jason Preston, Jason Ireland and Katherine Sozou of McGrathNicol (the **Liquidators**), be appointed as the provisional liquidators of the proposed Fourth to Seventh Respondents (Forum Group Financial Services Pty Limited (**FGFS**), Forum Group Pty Ltd, Forum Enviro Pty Ltd and Forum Enviro (Aust) Pty Ltd) (together, the **Forum Group Companies**) pursuant to s 472(2) of the *Corporations Act 2001 (Cth)* (**Act**).<sup>1</sup> In the alternative, Westpac seeks orders winding up each of the Forum Group Companies pursuant to s 461(1)(k) of the Act, and that the Liquidators be appointed as joint and several liquidators of those entities.<sup>2</sup> The First Respondent, Forum Finance Pty Ltd (in liquidation) (receivers appointed) (**Forum Finance**), relies upon the affidavit of Jason Ireland affirmed 13 July 2021 (**First Ireland Affidavit**) on the application.
- 2 The submissions of Forum Finance are limited primarily to those which may assist the Court in deciding whether Mr Preston, Mr Ireland and Ms Sozou are the appropriate persons to be appointed as liquidators, on the assumption the Court is minded to make the orders Westpac now seeks that liquidators be appointed to the Forum Group Companies. This approach is adopted principally in furtherance of Messrs Preston's and Ireland's obligations as officers of the Court following their appointment as the joint and several liquidators of Forum Finance on 9 July 2021, in circumstances where the investigations they have undertaken in the short amount of time that has passed since their appointment to Forum Finance are still at a preliminary stage.

---

<sup>1</sup> Interlocutory Application dated 12 July 2021, Orders 7 to 10.

<sup>2</sup> Interlocutory Application dated 12 July 2021, Order 11.

- 3 Notwithstanding the limited scope of those investigations to date, it has become clear that there is cross-over between the transactions between Westpac and Forum Finance on the one hand, and Forum Finance and the Forum Group Companies on the other. That matter and the fact that the Forum Group Companies are already under external administration lend support for the appointment of common liquidators to all entities.

### **Proposed appointment of McGrathNicol to the Forum Group Companies**

- 4 In light of the above, Forum Finance makes the following submissions in support of the Liquidators' appointment to the Forum Group Companies, should the Court be minded to appoint liquidators to those companies.
- 5 *First*, the appointment of liquidators to Forum Finance arose because of an application by Westpac to wind up Forum Finance on the just and equitable ground. The application was predicated on evidence of alleged dishonest and fraudulent conduct engaged in by Forum Finance and its representatives with respect to equipment / receivables financing arrangements Forum Finance had with Westpac. The Liquidators were appointed in large part to investigate that conduct (a matter which is in the public interest).<sup>3</sup> If external administrators of some kind are to be appointed to the Forum Group Companies, there is a real and substantial risk that the precise purpose underpinning the Liquidators' appointment to Forum Finance will be thwarted unless they are the same persons appointed across all entities. That is a powerful discretionary reason in the present circumstances to appoint common liquidators to all the Forum Group Companies, which is, plainly, a generally desirable course in any event.<sup>4</sup>
- 6 *Second*, the above submission is fortified by the evidence of Mr Ireland (one of the Liquidators) which reveals a clear commercial interconnectedness between Forum Finance and the Forum Group Companies, and the practical difficulties the Liquidators have experienced so far in conducting their investigations as between those entities. For example, Mr Ireland gives evidence that based on a review of

---

<sup>3</sup> *Australian Securities and Investments Commission (ASIC) v ActiveSuper Pty Ltd (No 2)* (2013) 93 ACSR 189 at [16] (Gordon J), citing *Tickle v Crest Insurance Co of Australia Ltd* (1984) 2 ACLC 493.

<sup>4</sup> See *ASIC v Westpoint Corporation Pty Ltd* (2006) 56 ACSR 646 at [32], citing with approval *Re Chilia Properties Pty Ltd (admin apptd)* (1997) 23 ACSR 548 (Lehane J).

Forum Finance's bank statements for one of its two bank accounts, funds advanced by Westpac to Forum Finance were on-paid to some of the Forum Group Companies in the period from about September 2018 to February 2019.<sup>5</sup> From about February 2019 onwards, the funds received by Forum Finance were paid out to FGFS.<sup>6</sup> However, the extent of any further flow of those funds beyond FGFS cannot be currently ascertained.<sup>7</sup> That is of some considerable concern, particularly in circumstances where FGFS is not included in the group's consolidated accounts for the financial year ending 30 June 2020.<sup>8</sup> One practical consequence of the Liquidators' appointment to FGFS and the other Forum Group Companies is the ability to readily access the documentary records of those entities created from time to time in order to trace the payments made by Westpac.<sup>9</sup> Indeed, in *Re 5G Developments Pty Ltd* [2019] FCA 1541 at [147], Stewart J held that a common liquidator may be in the *best* position to properly investigate and understand the transactions between the various companies to which they are appointed. That proposition is particularly apt in the present case.

- 7 *Third*, there are also benefits that the Liquidators' firm, McGrathNicol, can bring more broadly to the investigation of the affairs of the Forum Group Companies. Mr Ireland gives evidence of his intention to utilise McGrathNicol's forensic accounting and investigations team with experience in investigations of this kind,<sup>10</sup> and if necessary to utilise Alvarez and Marsal, a global advisory firm with which McGrathNicol has an alliance, if cross-border investigations are required.<sup>11</sup> It is submitted that these capabilities are commensurate with the needs of the investigations following the appointment of the Liquidators to Forum Finance and which are necessary for subsequent investigations in respect of the Forum Group Companies generally.
- 8 *Fourth*, it is plain that there is likely to be a reduction in the costs of the liquidations of the Forum Group Companies, and indeed Forum Finance, where common liquidators are appointed, rather than multiple sets of insolvency practitioners undertaking the same or very similar tasks. It has been held that an appointment of

---

<sup>5</sup> First Ireland Affidavit at [17(b)].

<sup>6</sup> First Ireland Affidavit at [17(c)].

<sup>7</sup> First Ireland Affidavit at [21].

<sup>8</sup> First Ireland Affidavit at [23].

<sup>9</sup> First Ireland Affidavit at [29].

<sup>10</sup> First Ireland Affidavit at [24]-[27].

<sup>11</sup> First Ireland Affidavit at [26(g)].

common insolvency practitioners is 'generally conducive to efficiency',<sup>12</sup> and there is no reason to doubt that general proposition in the present circumstances.

- 9 *Fifth*, there is evidence advanced by Westpac's solicitor that Westpac are prepared to fund the Liquidators by way of indemnity in the initial amount of \$200,000 if they are appointed (over and above the initial funding of \$250,000 provided to Mr Preston and Mr Ireland in relation to their investigations concerning Forum Finance).<sup>13</sup>

### **Conclusion**

- 10 For those reasons, if the Court were minded to grant Westpac the relief it seeks of the appointment of liquidators (or provisional liquidators) to the Forum Group Companies, it is desirable and appropriate that Mr Preston, Mr Ireland and Ms Sozou of McGrathNicol be appointed as the liquidators.

**N Kidd**

7 Wentworth Selbourne

T: (02) 9221 5655

E: [njk@7thfloor.com.au](mailto:njk@7thfloor.com.au)

**R Jameson**

Banco Chambers

T: (02) 9376 0683

E: [Ryan.Jameson@banco.net.au](mailto:Ryan.Jameson@banco.net.au)

Counsel for the First Respondent

**14 July 2021**

---

<sup>12</sup> *Willow Court Retirement Village Pty Ltd v ASIC* [2007] NSWSC 76 at [11] (Barrett J).

<sup>13</sup> Seventh Affidavit of Caitlin Murray sworn 12 July 2021 at [25].