

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 15/07/2021 10:34:58 AM 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:	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: 15/07/2021 11:18:02 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.

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Westpac Banking Corporation v Forum Finance Pty Ltd & Ors

Federal Court of Australia NSD 616/2021

**SUBMISSIONS OF THE FORUM GROUP COMPANIES FOR THE
HEARING ON 15 JULY 2021**

Introduction

1. On Monday, 12 July 2021 the applicant (“WBC”) filed and served an Interlocutory Application (“the Interlocutory Application”) on the Forum Group Companies¹ seeking, relevantly²:
 - a) leave to add the Forum Group Companies as respondents to the proceeding;
 - b) the appointment of Messrs Preston and Ireland, of McGrathNicol, as provisional liquidators of the Forum Group Companies.

The hearing should be adjourned

2. The Forum Group Companies, which are under administration, submit that the hearing of the Interlocutory Application should be adjourned for 3 reasons.
3. *First*, the outcome of the first meetings of creditors of the Forum Group Companies may render the substantive relief sought in the Interlocutory Application redundant. The meetings are to be held concurrently under s 436E of the *Corporations Act* 2001 (“the Act”) next Tuesday. On 13 July 2021, notwithstanding that WBC had filed its Interlocutory Application the previous day, WBC notified the administrators that it will propose a resolution at the meetings that Messrs Preston and Ireland and Ms Sozou, of McGrathNicol, be appointed

¹ As defined at prayer 7 of the Interlocutory Application.

² Having regard to WBC’s proposed short minute of orders, the other relief sought in the Interlocutory Application is not pressed against the Forum Group Companies at the hearing today.

as administrators to replace the current administrators. In other words, WBC has elected to propose a resolution at the meetings next Tuesday which, if passed, will render its application for the appointment of provisional liquidators unnecessary.

4. The administrators of the Forum Group Companies, Messrs Calabretta, Ward and Trafford-Jones (“the Administrators”), who are also administrators of 24 other companies in the same corporate group, do not oppose WBC proposing its resolution for their replacement. On the contrary, on 12 July 2021, they suggested it as the appropriate way for WBC to proceed: it affords the creditors of the Forum Group Companies their statutory entitlement, under s436E(4), to determine who should be the corporations’ administrators.
5. In short, by reason of WBC’s proposed resolution, it is a waste of the Court’s and the parties’ time and resources for the hearing of its Interlocutory Application to proceed prior to the conclusion of the first creditors’ meeting next Tuesday. If WBC’s resolution is passed, the Court will not be required to hear or determine WBC’s application for provisional liquidators to be appointed.
6. *Secondly*, there is no need for provisional liquidators to be appointed, much less prior to the first creditors’ meeting. The Forum Group Companies are under the control of the Administrators; not allegedly fraudulent directors. There is no risk of dissipation of assets. Nor is there any justification for the Court to take the drastic step of intervening, by appointing provisional liquidators, to preserve assets; again, much less prior to the first creditors’ meeting. The Administrators are experienced, competent, independent, insolvency professionals. Aspersions to the contrary in the “*Applicant’s Outline of Submissions*” dated 14 July 2021 (“AOS”) are serious, without foundation and should be withdrawn. Contrary to

those submissions, and unsurprisingly, by letter dated 12 July 2021 the Administrators' solicitors informed WBC's solicitors:

"We wish to be clear, however, that the question of the source of funds received by the Administration Companies is a matter that the administrators will be investigating in detail. Accordingly, we assure you and your client that our clients intend to undertake a detailed and comprehensive assessment of the source of funds paid to the Administration Companies including the extent to which funds were fraudulently obtained by Forum Finance and paid over to some or all of the Administration Companies. Indeed, the allegations of the magnitude of the fraud are alarming and a matter of the utmost concern."

7. The Administrators are plainly on notice of WBC's very serious allegations of fraud and shall discharge their functions mindful of the same.
8. Furthermore, the appointment of provisional liquidators is not be contemplated if other measures would adequately preserve the status quo³. By its proposed resolution referred to at par 4 above, WBC impliedly admits that the appointment of its preferred administrators would adequately preserve the status quo. This is a further reason not to appoint provisional liquidators at least until the conclusion of the first creditors' meeting.
9. *Thirdly*, the Administrators should be afforded a proper opportunity to oppose WBC's application. The Administrators wish to rely upon evidence to be prepared, described in Mr Calabretta's affidavit, at the hearing of the Interlocutory Application. They require a short period of time to prepare that evidence (about 1 week). In addition, WBC served its AOS at 6:37pm last night. Paragraphs 8 and 9 of that document disclosed to the Administrators, for the first time, that WBC

³ *Re Bluechain Pty Ltd* [2021] VSC 187 at [60].

relies upon 15 affidavits, the exhibits to those affidavits, part of a transcript and 2 prior sets of written submissions in support of the Interlocutory Application. The Administrators are not in a position to deal with this material, or the detailed submissions in the AOS that rely upon it, today. The Administrators should be afforded a proper opportunity to consider all of the material upon WBC relies, take such steps as advised to deal with it (including, if appropriate, by serving evidence additional to that foreshadowed above) and to respond to the detailed submissions in the AOS.

10. In order to avoid expending potentially unnecessary time and costs, if the Court considers it appropriate, the Administrators are content to await the outcome of the first creditors' meeting before undertaking this further work.

Conclusion

11. For the foregoing reasons the hearing of the Interlocutory Application should be adjourned to a time convenient to the Court and the parties after the first creditors' meeting. That time should also afford the Administrators a proper opportunity to oppose the application, if it is pressed, following the outcome of the meeting.

15 July 2021

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