

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 2/07/2021 12:58:20 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: Affidavit - Form 59 - Rule 29.02(1)
File Number: NSD616/2021
File Title: WESTPAC BANKING CORPORATION ABN 33 007 457 141 v FORUM
FINANCE PTY LIMITED & ANOR
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF
AUSTRALIA



Sia Lagos

Dated: 7/07/2021 4:22:14 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.



Form 59
Rule 29.02(1)

Affidavit

No. NSD616/2021

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

Westpac Banking Corporation ABN 33 007 457 141

Applicant

Forum Finance Pty Limited ACN 153 301 172 and another

Respondents

Affidavit of: **Nicholas Antony O'Brien**
Address: Level 30, 275 Kent Street, Sydney NSW 2000
Occupation: Managing Director, Head of Consumer & Industrials
Date: 1 July 2021

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Filed on behalf of (name & role of party) Westpac Banking Corporation, Applicant
Prepared by (name of person/lawyer) Caitlin Murray
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(include state and postcode) Our reference: CMM:AGS:1353397

Nicholas Antony O'Brien *D.H.*

I, Nicholas Antony O'Brien, Managing Director, say on oath:

Introduction

1. I am employed by Westpac Banking Corporation (**Westpac**) in the position of Managing Director (Head of Consumer and Industrial), Westpac Institutional Bank. I am authorised to make this affidavit on Westpac's behalf.
2. On 27 June 2021, I swore an affidavit in these proceedings (**First Affidavit**). Accompanying my First Affidavit was Exhibit NOB-1. Unless otherwise defined, capitalised terms used in this affidavit have the same meaning given in my First Affidavit.
3. Except where otherwise indicated, I make this affidavit from my own knowledge. Where I set out information based on information and belief, I believe that information to be true based on my enquiries of the relevant people.
4. Shown to me at the time of swearing this affidavit is an exhibit marked '**NOB-2**' (**Exhibit NOB-2**). In this affidavit I make reference to material within Exhibit NOB-2. Where I refer to a page number, it is a page number within Exhibit NOB-2.

Further assistance with Westpac investigation in relation to affected customers

5. As noted in paragraphs 31 to 44 of my First Affidavit, I have assisted with investigations into whether any Westpac customers which Westpac has identified as having exposures in relation to the Forum Finance / Eqwe arrangements may be affected by the issues detailed in my First Affidavit. Since swearing my First Affidavit, I have had further conversations with those customers, to which I refer below:

WesTrac Pty Ltd

6. Further to paragraphs 7 to 30 of my First Affidavit, on 28 June 2021 at 3:24pm (AEST), I was copied into an email from Carly Rossbach-Smith (Treasury Operations Manager, WesTrac) to my colleague Tim Ewing. In this email, Ms Rossbach-Smith advised that she had attached "*two pages from the original agreement that WesTrac legitimately had in place with Forum Group under Standing Offer CW2220212 which was signed by WesTrac on February 3rd 2016*". The documents referred to as attachments by Ms Rossbach-Smith are embedded in the email itself and were not attached (despite the comment in the email).

A copy of the email chain between Ms Rossbach-Smith and Mr Ewing is contained at pages 1 to 4 of Exhibit NOB-2.

HWL Ebsworth Lawyers

7. Further to paragraphs 33 to 34 of my First Affidavit, on 29 June 2021, Kris Hopkins (Chief Operating Officer, HWL) and I exchanged various emails, in which Mr Hopkins said (along with other things):

I can confirm our initial investigation into this has supported the comments made during our phone call that we do not believe that we have ever seen, received or executed these documents. They do not align to our print contract that we currently pay with Forum.

A copy of the email chain between Mr Hopkins and me is at pages 5 to 7 of Exhibit NOB-2.

8. Later that same day, Andrew Lourie (my colleague at Westpac) and I had a telephone conversation with Mr Hopkins.

Following my discussion with Mr Lourie and Mr Hopkins, Mr Lourie completed an internal report to record the substance of the conversation. A copy of the call report prepared by Mr Lourie is at pages 8 to 9 of Exhibit NOB-2.

9. After swearing of my First Affidavit, I have noticed a typographical error at paragraph 33 of my First Affidavit that I wish to correct. In recalling the conversation I had with Mr Hopkins in that paragraph, where I say "...we would request that there is now direct communication from HWL with Forum", this should read "...we would request that there is not direct communication from HWL with Forum".

Scentre Shopping Centre Management Pty Ltd

10. Further to paragraphs 35 to 36 of my First Affidavit, on 28 June 2021 at approximately 3.00pm (AEST), I am informed by Michael Davidson (my colleague at Westpac), and believe, that he received a phone call from Richard Williams (Group Treasurer, Scentre). During this conversation, Mr Williams advised that Scentre have not been able to locate a copy of any contracts or agreements entered into in relation to the Forum Finance / Eqwe arrangements, and that there is no regular payment(s) set up in Scentre's accounts payable system that appears to be related to the Forum Finance / Eqwe program.

Following his discussion with Mr Williams, Mr Davidson completed an internal report to record the substance of the conversation, a copy of which has been provided to me. A copy of the call report prepared by Mr Davidson is at pages 10 to 11 of Exhibit NOB-2.

11. On 29 June 2021, Mr Davidson and I had a video conference with Mr Williams and Sheridan Joel (Deputy Group Counsel, Scentre).

Following my discussion with Mr Davidson, Mr Williams and Ms Joel, Mr Davidson completed an internal report to record the substance of the conversation. A copy of the call report prepared by Mr Davidson is at pages 12 to 13 of Exhibit NOB-2.

Coles Supermarkets Australia Pty Limited

12. Further to paragraphs 37 to 38 of my First Affidavit, on 29 June 2021, I had a video conference with Shane Healey (Group Treasurer, Coles Supermarkets Australia Pty Limited (**Coles**)) and Cameron Newell (Head of Corporate Business Protection, Coles).

Following my discussion with Mr Healey and Mr Newell, I completed an internal report to record the substance of the conversation. A copy of the call report prepared by me is at pages 14 to 15 of Exhibit NOB-2.

ALH

13. Further to paragraphs 39 to 42 of my First Affidavit, on 29 June 2021 at approximately 7:30pm (AEST), Suzy Collier (Executive Director, Consumer NSW), Stuart Akhurst (Director, Consumer NSW) and I had a video conference with Tricia Ho Hudson (Treasurer, Woolworths Holdings) and Shane Gannon (Chief Financial Officer, Endeavour Group). Based on my communications with these representatives of Woolworths Holdings and Endeavour Group, I understand that Endeavour Group (which demerged from Woolworths Holdings on or about 28 June 2021) is the owner of ALH.

Following my discussion with Ms Collier, Mr Akhurst, Ms Hudson and Mr Gannon, Mr Akhurst completed an internal call report to record the substance of the conversation. A copy of the call report prepared by Mr Akhurst is at pages 16 to 18 of Exhibit NOB-2.

14. Following the call above, on 29 June 2021 at 7.52pm (AEST), Ms Ho Hudson sent me an email which said:

We have conducted an accounting system search for arrangements with the following companies and have not found any relationship:

- *Eqwe Pty Ltd (formerly named BHO Funding Pty Ltd)*
- *Forum Finance Pty Ltd*

We have found a relation with the following company which has supplied Orcas or other food waste solution to us since 2017:

- *Forum Enviro Pty Limited*

The first record of payments we have is in August 2017 and payments continue to be made until the present time. They are invoiced by Forum Enviro in the last week of every month and paid by ALH approximately 14 days later. This appears to relate to equipment located in 6 venues, although we would have to check this with the business team at an appropriate time as the accounting system codes may cover more than one location.

A copy of this email is at pages 19 to 20 of Exhibit NOB-2.

Veolia Environmental Services (Australia) Pty Ltd

15. Further to paragraph 43 of my First Affidavit, on 29 June 2021 at approximately 3.00pm (AEST), Natalie Dundovic (my colleague at Westpac) and I had a video conference with Jane Sandilands (Head of Legal, Veolia).

Following my discussion with Ms Sandilands and Ms Dundovic, Ms Dundovic completed an internal call report to record the substance of the conversation. A copy of the call report prepared by Ms Dundovic is at pages 21 to 23 of Exhibit NOB-2.

16. On 30 June 2021 at 10:45am (AEST), I received an email from my colleague Peter Deutsch forwarding a chain of emails, within which contained an email from Luke Price of Eqwe. The email from Mr Price was in respect to an authority to sign on behalf of Veolia. This email chain attached an authority, which noted that Laurie Kozlovic was an authorised signatory of Veolia and is authorised by Veolia to execute documents entered into "*in connection with the supply of ORCA units from Forum Finance Pty Ltd*".

A copy of this email chain and its attachment is at pages 24 to 27 of Exhibit NOB-2.

Catholic Healthcare

17. Further to paragraph 44 of my First Affidavit, on 28 June 2021, my colleague David Dixon Hughes and I had a call with Stacy Flanagan (Financial Controller, Catholic Healthcare Limited (**Catholic Healthcare**)) and Matthew Randall (Head of Financial Assurance, Catholic Healthcare).

Following my discussion with Mr Dixon Hughes, Ms Flanagan and Mr Randall, Mr Dixon Hughes completed an internal call report to record the substance of the conversation. A

copy of the call report prepared by Mr Dixon Hughes is at pages 28 to 30 of Exhibit NOB-2.

Sworn by the deponent
at Sydney
in New South Wales
on 1 July 2021
Before me:

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)
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Signature of deponent



Signature of witness

Daniel Henningsen, Solicitor

And 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 applying his electronic signature to 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:

NSW Drivers Licence

identification document relied on (may be original or certified copy)

Schedule of Parties

No. NSD616/2021

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

Applicant

Applicant **Westpac Banking Corporation ABN 33 007 457 141**

Respondents

First Respondent **Forum Finance Pty Limited ACN 153 301 172**

Second Respondent: **Basile Papadimitriou**

Ver O'B
D.H.