

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 8/07/2021 6:55:35 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 & ORS
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF
AUSTRALIA



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

Dated: 8/07/2021 6:56:56 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 others named in the Schedule

Respondents

Affidavit of: Caitlin Maria Murray

Address: Level 40, Governor Macquarie Tower, One Farrer Place, Sydney NSW 2000

Occupation: Solicitor

Date: 8 July 2021

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1.	Affidavit of Caitlin Maria Murray in support of interlocutory application for appointment of provisional liquidator of the First Respondent dated 28 June 2021 (Sixth Affidavit)	1	2
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Filed on behalf of (name & role of party) Westpac Banking Corporation, applicant

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

I, Caitlin Maria Murray of Level 40, Governor Macquarie Tower, One 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 applicant (**Westpac**) and make this affidavit in support of Westpac's interlocutory application dated 28 June 2021.
2. I have sworn five previous affidavits in these proceedings, as follows:
 - (a) my first affidavit and my second affidavits on 28 June 2021;
 - (b) my third affidavit and my fourth affidavits on 2 July 2021;
 - (c) my fifth affidavit on 7 July 2021,
 (together, my **Earlier Affidavits**).
3. Exhibited to me at the time of swearing this affidavit is a paginated bundle of documents marked 'Exhibit CMM-4' (**CMM-4**). Throughout this affidavit I refer to documents which appear within CMM-4.

Correspondence with Panetta Lawyers (current solicitors for second respondent)

4. This court made orders on 2 July 2021 in these proceedings:
 - (a) in relation to Westpac's interlocutory application and originating application filed on 28 June 2021; and
 - (b) in relation to Westpac's interlocutory application filed on 2 July (**Second 2 July Orders**).
5. In accordance with order 3(b) of the Second 2 July Orders, on 2 July 2021 at approximately 3.19pm (AEST), I was copied to an email sent by Anthony Sommer (**Mr Sommer**), a solicitor under my employ, to r.panetta@panetta.com.au, which I knew from prior correspondence to be the email address of Mr Rocco Panetta of Panetta Lawyers (**Mr Panetta**), attaching by way of service the following documents in these proceedings:
 - (a) the Second 2 July Orders;
 - (b) the interlocutory application filed on 2 July 2021;
 - (c) the interlocutory application filed 28 June 2021;
 - (d) the originating application filed 28 June 2021;
 - (e) the affidavit of Nicholas Antony O'Brien sworn 27 June 2021;the

Signed:



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Taken by:



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- (f) the affidavit of Nicholas Antony O'Brien sworn 1 July 2021;
 - (g) the affidavit of Geoffrey Keith Anderson sworn 28 June 2021;
 - (h) my Earlier Affidavits; and
 - (i) the affidavit of Anna Ross affirmed 1 July 2021.
6. On 2 July 2021 at approximately 5.43pm (AEST), I was copied to a further email from Mr Sommer to Mr Panetta, attaching a copy of the transcript of the hearing in these proceedings on 2 July 2021.
 7. A copy of the emails to which I refer to in paragraphs 5 and 6 above (excluding attachments) is at pages 1 to 4 of CMM-4.
 8. On 5 July 2021 at approximately 5.21pm (AEST), I was copied to an email sent by Mr Panetta in response to Mr Sommer's first email of 2 July 2021, in which Mr Panetta stated:
 - (a) that he no longer acts for Vincenzo Frank Tesoriero (**Mr Tesoriero**); and
 - (b) that he had forwarded a copy of Mr Sommer's email to Mr Tesoriero.
 9. A copy of that email to which I refer to in paragraph 8 is at pages 5 to 6 of CMM-4. I was not provided with a copy of the email to Mr Tesoriero or with any email or contact details for Mr Tesoriero.
 10. I understand that Mr Panetta continues to act for Mr Papas in respect of this proceeding, but have as at the date of service of this affidavit not been served with a notice of appearance in relation to Mr Papas.

Correspondence with Fortis Law (solicitors for the third respondent)

11. In the afternoon of 6 July 2021, I received a telephone call from Christopher Nehme (**Mr Nehme**), who I understood to be a partner of Fortis Law, in which Mr Nehme said words to the following effect:

Mr Nehme: I have been approached by Vince Tesoriero to act for him in these proceedings. I am going to file a notice of appearance.
12. Prior to that telephone call, I did not know that Mr Nehme was acting for Mr Tesoriero.
13. On 7 July 2021 at approximately 12:42am (AEST), I received an email from Mr Nehme in which Mr Nehme, among other things, confirmed his engagement to act on behalf of Mr Tesoriero.

Signed:



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Taken by:



- 14. A copy of that email to which I refer to in paragraph 13 is at page 7 of CMM-4.
- 15. As at the time of swearing this affidavit I have not been served with a copy of any Notice of Appearance for Mr Tosiero in relation to the proceeding.

Updated ASIC search

- 16. On 8 July 2021, I caused a further search to be conducted of the records held by ASIC in respect of Forum Finance Pty Limited ACN 153 301 172 (**Forum Finance**).
- 17. A copy of the ASIC extract for Forum Finance is at pages 8 to 19 of CMM-4.

Property Searches

- 18. As set out in my Earlier Affidavits, I caused Kate Cockburn (**Ms Cockburn**), a solicitor in my employ, to carry out various Australia wide real property searches. I am informed by Ms Cockburn and verily believe that she conducted searches of the real property registers in NSW, Victoria, the ACT, the NT, South Australia, Queensland and Western Australia for real property owned in the name Forum Finance.
- 19. I am informed by Ms Cockburn and verily believe that based on her review of those searches, Forum Finance does not appear to own any real property in NSW or in any other Australian jurisdiction.

Scope of Westpac's exposure

- 20. At pages 20 to 24 of the Exhibit is a schedule generated by Westpac from its systems showing the monthly cumulative drawdown summary, together with drawdowns on a customer by customer basis.

Sworn by the deponent
 at Sydney
 in New South Wales
 on 8 July 2021

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 Signature of deponent

Before me:



 Signature of witness
 Simon Henry Brandis
 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 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 License

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: Sydney

Applicants

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

Respondents

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

Second Respondent: **Basile Papadimitriou**

Third Respondent **Vincenzo Frank Tesoriero**