

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 25/08/2021 2:45:17 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 & ANOR v
FORUM FINANCE PTY LIMITED & ORS
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF
AUSTRALIA



Sia Lagos

Dated: 25/08/2021 3:37:27 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 and another named in the Schedule
Applicants

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: 25 August 2021

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1.	Affidavit of Caitlin Maria Murray sworn on 25 August 2021	[1]	2
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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

Kate Cockburn

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 first applicant, Westpac Banking Corporation (**Westpac**), and the second applicant Westpac New Zealand Limited (**WNZL**).
2. I have previously sworn affidavits in relation to these proceedings, including:
 - (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;
 - (d) my sixth affidavit sworn on 8 July 2021;
 - (e) my seventh affidavit sworn on 12 July 2021;
 - (f) my eighth affidavit sworn on 14 July 2021;
 - (g) my ninth affidavit sworn on 15 July 2021;
 - (h) my tenth affidavit sworn on 15 July 2021; and
 - (i) my eleventh affidavit sworn 20 July 2021,
 (together, my **Earlier Affidavits**).
3. This affidavit is sworn in support of the applicants' interlocutory application dated 25 August 2021 (**August IA**). The August IA seeks:
 - (a) variations to the freezing order made against the third respondent, Vincenzo Frank Tesoriero (**Mr Tesoriero**), by order 4 of the orders made by Justice Lee on 2 July 2021 in relation to the interlocutory application dated 2 July 2021 (as varied on 9 July 2021);
 - (b) a freezing order against the thirteenth respondent, 23 Margaret Street Pty Ltd ACN 623 715 373 (**23 Margaret Street**), pursuant to section 23 of the *Federal Court Act 1976* (Cth) (**Act**) and rule 7.32 of the *Federal Court Rules 2011* (Cth) (**FCR**); and
 - (c) an order pursuant to section 23 of the Act and FCR 7.33, further or alternatively pursuant to section 57 of the Act and FCR 14.21, that Jason Ireland and Jason Preston of McGrathNicol, Level 12, 20 Martin Place Sydney NSW 2000 (be appointed as receivers and managers of the property with folio identifier

Signed:



Taken by: *Kate Cockburn*

106/1021924 known as 23 Margaret Street, Rozelle NSW 2039
(**Rozelle Property**).

4. Exhibited to me at the time of swearing this affidavit is a paginated bundle of documents marked 'Exhibit CMM-10' (**CMM-10**). Throughout this affidavit I make reference to documents which appear at CMM-10.

Existing freezing order and affidavit as to Australian assets.

5. On 2 July 2021, Westpac applied for, and obtained a freezing order against Mr Tesoriero. The freezing order applied to the Australian assets of Mr Tesoriero and was extended and varied by order of the Court on 9 July 2021.
6. On 21 July 2021, Mr Tesoriero provided an affidavit as to his assets (**Assets Affidavit**). Among other matters, within the Assets Affidavit, Mr Tesoriero set out in:
- (a) Annexure A, a schedule of the assets in which he indicated that he had a direct or indirect interest in; and
- (b) Annexure D, a schedule of the shares Mr Tesoriero held in his name.
7. In Annexure A of the Assets Affidavit, Mr Tesoriero disclosed his interest in the 23 Margaret Street Trust and the Rozelle Property as follows:

	Property Address	Legal Owner	Extent of Interest or control (refer to Key Entities Legend)	Liability (approx.)	Value (approx.)	Location	Monthly Interest Expense (approx.)	Rental Income (approx.)	Bank account where Interest Expenses is Paid
7.	23 Margaret St, Rozelle NSW being land contained in folio identifier:	23 Margaret St Trust	Refer to Key Ultimate Holding Entities Legend.	\$4,000,000 loan made up of: (a) 2,900,000 owing to AFHS; and (b) \$1,100,000 from a related entity.	\$4,100,000	Australia	\$13,000	N/A.	NAB

8. Mr Tesoriero also disclosed, in Annexure D of the Assets Affidavit, his interest in shares in:
- (a) 23 Margaret Street; and
- (b) Mangusta (Vic) Pty Ltd ACN 631 520 682 (**Mangusta**); and
- (c) 8-12 Natalia Ave Oakleigh Pty Ltd ACN 643 838 626.
9. The Assets Affidavit indicated the value of the shares in each of these entities as being "nominal".

Signed: 

Taken by: *Kate Cockburn*

10. On 27 July 2021, MinterEllison sent a letter to Fortis Law in relation to the Assets Affidavit, in which concern was expressed as to the adequacy of the Assets Affidavit (**27 July Letter**). The 27 July Letter attached:
- (a) a notice to produce in Form 61 under the FCR (**Form 61 NtP**); and
 - (b) a notice to produce a document in relation to the Assets Affidavit in Form 39 (**Form 39 NtP**),
- addressed to Mr Tesoriero. A copy of the 27 July Letter and the Form 61 NtP and Form 39 NtP is at pages 1 to 13 of CMM-10.
11. On 28 July 2021, MinterEllison received a letter from Fortis Law in relation to the freezing order. A copy of this letter without its annexures is at pages 14 to 19 of CMM-10.
12. On 11 August 2021, in response to the Form 61 NtP Mr Tesoriero produced, among other documents, a copy of the trust deed for the Margaret Street Trust. A copy of this trust deed is at pages 20 to 64 of CMM-10. Although the Form 61 NtP requested a copy of the most recent accounts for 23 Margaret Street, no accounts were produced by Mr Tesoriero.

Mr Tesoriero's worldwide assets and worldwide freezing order

13. On 6 August 2021, Westpac was informed by Jason Ireland and Jason Preston of McGrathNicol (**Liquidators**), the joint and several liquidators of Forum Finance Pty Ltd (in liquidation) and the provisional liquidators of Forum Group Financial Services Pty Ltd (provisional liquidators appointed) (**FGFS**), in response to an information request made in accordance with section 70-45 of the Insolvency Practice Schedule (Corporations) (**IPSC**) at Schedule 2 to the *Corporations Act 2001* (Cth) (**Corporations Act**), of assets of which had been identified within the records of the Forum group of companies as having been acquired using money paid by one or more companies in that group.
14. Included in the assets which had been identified was a motor yacht the "XOXO" with Cayman Islands Official Number 734587. A copy of the Bill of Sale for the XOXO dated 26 February 2019 is at pages 65 to 75 of CMM-10. Prior to the information in relation to the XOXO being provided by the Liquidators, the applicants were not aware of the XOXO and Mr Tesoriero's interest in this vessel.
15. A copy of the current and historical extract of the records of the Australian Securities and Investments Commission (**ASIC**) for Mangusta dated 4 August 2021 is at pages 76 to 84 of CMM-10. I note that this ASIC search states that Mr Tesoriero is the sole director and shareholder of Mangusta.

Signed:



Taken by: *Kate Cockburn*

16. I understand that Mangusta owns the XOXO in its capacity as trustee of the Mangusta Trust which is a discretionary trust. A copy of the Trust Deed establishing the Mangusta Trust dated 1 June 2018 (**Mangusta Trust Deed**) is at pages 85 to 153 of CMM-10. I note that the Schedule to the Mangusta Trust Deed states that Mr Tesoriero and Basile Papadimitriou (**Mr Papas**) are the Appointors and Primary Beneficiaries of the Mangusta Trust.
17. I note that the Assets Affidavit does not disclose Mr Tesoriero's interest in the Mangusta Trust, and in Annexure A to the Tesoriero Affidavit Mr Tesoriero values the shares he holds in Mangusta at nil. I also note that internet searches of the XOXO yacht conducted by solicitors of MinterEllison on about 9 August 2021 identified webpages where the XOXO appeared to be listed for sale. A copy of the webpages showing the XOXO motor yacht to be for sale are at pages 157 to 164 of CMM-10.
18. On 9 August 2021, I sent a letter to Mr Christopher Nehme of Fortis Law, the firm of solicitors acting for Mr Tesoriero, in relation to the Assets Affidavit and the XOXO. The letter set out that further investigations had uncovered additional assets that had not been mentioned in the Assets Affidavit, including Mr Tesoriero's interests in certain companies and in the Mangusta Trust and the vessel the XOXO. The letter sought Mr Tesoriero's consent to, among other things, an extension of the freezing orders to his assets worldwide and confirmation as to whether a supplementary affidavit as to assets would be provided. A copy of that letter and its annexures is at pages 154 to 164 of CMM-10.
19. On 10 August 2021, I received an email from Mr Nehme. In this email Mr Nehme indicated that Mr Tesoriero would consent on a without prejudice / without admissions basis to an order extending the freezing order to any worldwide assets. A copy of this letter is at pages 165 to 167 of CMM-10.
20. The 10 August 2021 email also indicated, among other things, that Mr Tesoriero had taken steps to request an agency appointment in relation to the Rozelle Property. The correspondence in relation to the Rozelle Property is addressed further below.
21. On 12 August 2021, MinterEllison sent a letter by email to Fortis Law. The letter enclosed proposed short minutes of order in relation to the extension of the freezing order to a worldwide freezing order. A copy of the letter and the proposed short minutes is at pages 168 to 182 of CMM-10.
22. On 12 and 13 August 2021, I was copied to various emails exchanged between Mr Sommer and Mr Nehme in relation to, among other matter, the extension of the

Signed:



Taken by: *Kate Cockburn*

freezing orders to a worldwide freezing order. The amendments to the freezing order also sought to identify vehicles and vessels (including the XOXO) as assets which, to the extent of Mr Tesoriero's interest in those assets, were subject of the order. By email sent at 4.41pm on 13 August 2021, Mr Nehme indicated that Mr Tesoriero did not agree to the inclusion of one of the vehicles and four of the motorbikes referred to as assets in the freezing order. A copy of the Mr Nehme email sent at 4.41pm on 13 August 2021 is at pages 183 to 192 of CMM-10. This email includes within the chain the earlier emails exchanged on 12 and 13 August 2021. A copy of Mr Sommer's further email to Mr Nehme sent at 5.20pm and its attachments is at pages 193 to 221 of CMM-10. This email requested that Mr Tesoriero provide certificates of registration in relation to the disputed vehicle and motorcycles.

23. On 16 August 2021, I was copied to a further email from Mr Nehme to Mr Sommer in relation to the freezing order and the Assets Affidavit, a copy of which is at pages 222 to 223 to CMM-10. Despite request no certificates of registration have been provided by Mr Tesoriero in relation to the vehicle and motorcycles which are in dispute.
24. On 23 August 2021, the Court issued a subpoena to produce documents at the request of the applicants to the Department of Transport (Victoria), seeking production of certificates of registration in respect of certain motor vehicles and motor cycles that are referred to in the emails dated 12 to 16 August 2021 between MinterEllison and Fortis Law to which I refer in paragraphs 22 to 23 above (**Transport Department Subpoena**). I note that the Transport Department Subpoena has been listed by the Court for a return of subpoena hearing on 1 September 2021.
25. Correspondence has been exchanged between the applicants, the Liquidators and Mr Tesoriero in relation to the appointment of the Liquidators as receivers of the XOXO and certain real property. A copy of the letters dated 5 August (Fortis Law to Allens); 10 August (Allens to Fortis Law); 16 August (Fortis Law to Allens); 19 August 2021 (Allens to Fortis Law); 24 August (Allens to Fortis) and the email from Allens to Fortis Law dated 23 August 2021 is at pages 224 to 235 of CMM-10.

23 Margaret Street

26. On 20 August 2021, I caused solicitors employed by MinterEllison to conduct the following searches of publicly available information in relation to 23 Margaret Street:
 - (a) a current and historical extract of records of ASIC, a copy of which is at pages 236 to 244 of CMM-10; and

Signed:



Taken by: *Kate Cockburn*

- (b) a grantor search of the Personal Property Securities Register maintained under the *Personal Property Securities Act 2009* (Cth) (**PPSR**) (by company name and ACN of 23 Margaret Street), a copy of which is at pages 245 to 254 of CMM-10.
27. I note that based on the ASIC search to which I refer at paragraph 26(a), 23 Margaret Street:
- (a) is a company incorporated in Australia;
- (b) was duly registered as a corporation under the Corporations Act on 9 January 2018;
- (c) is not currently subject to any form of external administration under the Corporations Act;
- (d) has had Mr Tesoriero as its sole director and shareholder since 9 January 2018.
28. I note that based on the PPSR search to which I refer at paragraph 26(b), that no security interests have been registered on the PPSR against 23 Margaret Street.

Production of bank statements

29. On 14 July 2021, in response to a subpoena, the (then) voluntary administrators of the Forum Group of companies produced to the Court bank account statements for:
- (a) a FGFS bank account with account number 27 1058 642 (**FGFS Account**) for the period 1 July 2019 to 29 June 2021;
- (b) a Forum Enviro Pty Ltd (**FE**) bank account with account number 84 5480 595 (**FE Account**).

Payments made from FGFS to 23 Margaret Street and for the benefit of Mangusta

30. I am informed by solicitors employed by MinterEllison that the bank account statements for the FGFS Account record payments which appear to be described by reference to 23 Margaret Street. At pages 255 to 281 of CMM-10 are extracts from the FGFS Account statements which record these payments.
31. I am informed by solicitors employed by MinterEllison that the bank account statements for the FGFS Account record payments totalling \$150,009.85 which appear to be described by reference to Mangusta, as follows:
- (a) on 30 May 2019 in the amount of \$4,145.31;
- (b) on 14 November 2019 in the amount of \$4,113.56;
- (c) on 11 March 2020 in the amount of \$267;

Signed:



Taken by:

Kate Cockburn

- (d) on 23 March 2020 in the amount of \$4,856.60;
- (e) on 19 November 2020 in the amount of \$110,278.01;
- (f) on 15 January 2021 in the amount of \$26,076.37; and
- (g) on 8 April 2021 in the amount of \$273.

At pages 285 to 296 of CMM-10 are extracts from the FGFS Account statements which record the above payments. The payments made on 19 November 2020 and 15 January 2021 are recorded as being to "Middle Point Marina". An internet search shows Middle Point Marina to be a boat yard in Florida. A copy of the internet pages I have found is at pages 297 to 300 of CMM-10.


32. On 6 August 2021, the Liquidators provided to the Applicants, pursuant to an information request in accordance with section 70-45 of the IPSC a balance sheet for FGFS as at 30 June 2019, 30 June 2020 and 30 June 2021 extracted from the Xero accounting system (**FGFS Balance Sheet**). A copy of the FGFS Balance sheet records as a non-current assets a loan receivable with the description "Loan - 23 Margaret Street" in the amount of \$687,741.90 for the financial year ended 30 June 2021. A copy of the FGFS Balance Sheet is at pages 282 to 283 of CMM-10.
33. Included within the Xero accounting records provided by the Liquidators is a worksheet titled "Loans - 23 Margaret Street Transactions" for the period 1 July 2010 to 30 June 2021, a copy of which is at page 284 of CMM-10. This worksheet records a running balance of \$687,741.90 as at 30 June 2021.
34. While Westpac and WNZL do not accept the characterisation of these transactions in the Xero records (in particular, the characterisation of the transfer out of funds fraudulently obtained from them as 'loans'), the documents appear to record the amount of funds paid from FGFS to 23 Margaret Street.

Payments made from Forum Enviro Pty Ltd (in liquidation) to 23 Margaret Street

35. I am informed by solicitors employed by MinterEllison that the bank account statements for the FE Account record payments with a description which appears to show payments to 23 Margaret Street. At pages 301 to 307 of CMM-10 are extracts from the FE Account statements showing these payments.

Funds received by 23 Margaret Street

36. On 29 July 2021, the Court issued a subpoena to produce documents at the request of Westpac to NAB seeking production of 23 Margaret Street's bank account statements

Signed:  Taken by: *Kate Cockburn*

(NAB Subpoena). I am informed by solicitors employed by MinterEllison that contained within the material produced in response to the NAB Subpoena is a copy of 23 Margaret Street bank account statements recording receipts into that account which appear to be described by reference to FGFS. At pages 308 to 335 of CMM-10 is a copy of the 23 Margaret Street bank account statements produced under the NAB Subpoena.

37. The statements show receipts corresponding to the payments made from the FGFS Account and the FE Account.
38. The Liquidators issued a subpoena to NAB seeking “traces” for a number of transactions from the Forum group of companies bank accounts. In response to this subpoena, NAB produced a spreadsheet titled “Outbound Transactions”. I am informed by Kate Cockburn, a solicitor employed by MinterEllison, and believe that she filtered the spreadsheet to show only payments to “Transaction Account Name” 23 Margaret Street. A copy of the extract of the filtered NAB Outbound Transactions report showing payments from:
- (a) the FGFS account to 23 Margaret Street is at page 336 of CMM-10. These transactions record payments in the amount of \$853,233.16;
 - (b) the FE Account to 23 Margaret Street is at page 337 of CMM-10. These transactions record payments in the amount of \$108,533.28; and
 - (c) another Forum account with account number 12 1782 934 to 23 Margaret Street is at page 338 of CMM-10. These transactions record payments in the amount of \$54,266.64.
39. At the request of Westpac a subpoena was issued to Pacific Blue Tax Services Pty Ltd (**Pacific Blue**). In response to this subpoena Pacific Blue produced, among others, the following documents in relation to 23 Margaret Street:
- (a) the FY2019 tax return and financial statements, a copy of which is at pages 339 to 354 of CMM-10; and
 - (b) the FY2020 tax return and financial statements, a copy of which is at pages 355 to 365 of CMM-10.
40. Westpac and WNZL do not accept the accuracy of these accounts, (in particular, the characterisation of funds received from FGFS as a ‘loan’), which appear to record that funds were paid from FGFS to 23 Margaret Street.

Signed:



Taken by: *Kate Cockburn*

The Rozelle Property

41. I caused solicitors employed by MinterEllison to obtain a title search from the records of NSW Land Registry Services under the Real Property Act 1900 (NSW) in relation to the Rozelle Property. A copy of a title search in relation to the Rozelle Property dated 20 August 2021 (**Property Title Search**) is at page 404 of CMM-10.
42. Based on the Property Title Search to which I refer at paragraph 41:
- (a) 23 Margaret Street is the sole registered proprietor of the Rozelle Property in the first schedule of the title, having acquired the Rozelle Property under a registered transfer number AN310815 (**Transfer**). A copy of the Transfer obtained from the NSW Land Registry Services is at page 405 of CMM-10; and
 - (b) AFSH Nominees Pty Ltd (**AFSH**) is the sole registered mortgagee of the Rozelle Property in the second schedule of the title, holding a registered mortgage number AN310816 (**Mortgage**). A copy of the Mortgage obtained from the NSW Land Registry Services is at pages 406 to 407 of CMM-10; and
 - (c) Westpac is the sole caveator of the Rozelle Property in the second schedule of the title, having lodged a caveat number AR272704 (**Caveat**). A copy of the Caveat obtained from the NSW Land Registry Services is at pages 408 to 409 of CMM-10.
43. The Transfer states that 23 Margaret Street purchased the Rozelle Property (in an estate in fee simple) for the consideration of \$4,100,000.00 (**Purchase Price**) on 30 April 2018. As set out above, the Assets Affidavit provided an indicative value of \$4,100,000 for the Rozelle Property.
44. On 29 July 2021, the Court issued a subpoena to produce documents at the request of the applicants to AFSH. In response to the subpoena AFSH produced a copy of a statement of account dated 2 August 2021 in relation to the loan owed by 23 Margaret Street in relation to the Rozelle Property and secured by the Mortgage (**Loan Account Statement**). A copy of the Loan Account Statement is at pages 410 to 412 of CMM-10.
45. The Loan Account Statement states among other things that:
- (a) the loan was made on 30 April 2018 in the amount of \$2,880,000.00; and
 - (b) the outstanding balance of the loan was \$2,788,724.85 as at 1 July 2021.

Signed:



Taken by: *Kate Cockburn*

46. The 23 Margaret Street bank account statements (at pages 308 to 335 of CMM-10) show payments out of that account with the description "AFSH Nom". These payments correspond with receipts recorded on the AFSH Loan Account Statement.
47. On 11 August 2021, I received an email from Mr Nehme in relation to the potential sale of the Rozelle Property. A copy of this email and its attachments is at pages 366 to 403 of CMM-10. Included in the attachments was a "sales submission" from Raine & Horne which provided an estimated price range of \$3,100,000 to \$3,300,000 for the Rozelle Property.
48. On 19 August 2021, at 10.11am I was copied to an email from Mr Sommer to Mr Nehme in response to the 11 August 2021 email about the sale of the Rozelle Property. The email expressed concern at the guide price for the Rozelle Property and attached a valuation obtained from the Forum group company records for the Rozelle Property dated 30 September 2020. The September 2020 valuation indicated a market value for the Rozelle Property "as-is" of \$3,800,000, but subject to certain express limitations and by reference only to the value at 30 September 2020. A copy of the email and the valuation is at pages 413 to 483 of CMM-10. By this email the applicants requested access to the Rozelle property to undertake a valuation of the Rozelle Property.
49. On 19 August 2021, at 6.08pm, I was copied to an email from Mr Nehme to Mr Sommer in relation to the sale of the Rozelle Property. The email attached a revised agency agreement for the sale of the Rozelle Property which provided a revised price range of \$3,500,000 to \$3,700,000. A copy of this email and its attachments is at pages 484 to 535 of CMM-10.
50. On 20 August 2021, at 9.06am I was copied to a further email from Mr Sommer to Mr Nehme in relation to the sale of the Rozelle Property. This email again requested access to the Rozelle Property for the purposes of carrying out a valuation. The email also attached a proposed undertaking to be given in relation to the sale of the Rozelle Property following receipt of which the applicants would consent to a sale. A copy of the email and its attachment is at pages 576 to 581 of CMM-10.
51. On 20 August 2021, I was copied to further emails between Mr Sommer and Mr Nehme in relation to the sale of the Rozelle Property:
- (a) By email received at 10.51am, Mr Nehme indicated that his client questioned why a kerb-side valuation could not be undertaken and did not indicate consent to the proposed undertaking. Further, the email said that unless a response was

Signed: 

Taken by: *Kate Cockburn*

received by 4pm his client proposed to proceed with listing the Rozelle Property for sale.

- (b) By response sent at 6.17pm, Mr Sommer again requested that either access for a valuation be permitted or the undertaking be agreed.

A copy of the email chains dated 20 August 2021 are at pages 582 to 584 of CMM-10.

52. As at the time of swearing this affidavit, I have not seen a response to the 20 August email from Mr Sommer and Mr Tesoriero and 23 Margaret Street have not agreed to Westpac's request that its nominated valuer be given access to the Rozelle Property to conduct a valuation, nor have they agreed to Westpac's request for an undertaking in the form of the draft short minutes of order proposed by Westpac.

Westpac's desktop valuation of the Rozelle Property

53. A copy of a valuation review memorandum prepared by Westpac for the Rozelle Property dated 23 August 2021 is at pages 585 to 587 of CMM-10 (**Westpac Desktop Valuation**). I note that the Westpac Desktop Valuation provides an indicative valuation for the Rozelle Property as at 23 August 2021 in the range of \$4,300,000 to \$5,000,000.
54. Westpac has also obtained the following property valuation documents in relation to the Rozelle Property:
- (a) a document titled "Property Profile" in relation to the Rozelle Property based on data from RP Data Pty Ltd trading as CoreLogic (**CoreLogic**) (which I understand to be an authorised Property Sales Information provider by NSW Land and Property Information), a copy of which is at pages 588 to 599 of CMM-10;
- (b) a document titled "Suburb Report" in relation to Rozelle NSW 2039, a copy of which is at pages 601 to 608 of CMM-10;
- (c) a document titled "The premium for houses over units has hit record highs – which capital city shows the biggest gap?" dated 29 July 2021 by Eliza Owen, Head of Research Australia at CoreLogic, a copy of which is at pages 609 to 613 of CMM-10. I note that this document contains a graph which shows the increase in Sydney house and unit price median values in the period from June 2007 to June 2021;
- (d) a document titled "Comparative Market Analysis - Property Profile" in relation to the Rozelle Property, a copy of which is at pages 614 to 623 of CMM-10. I note that this document contains a graph titled "Long Term Market Trends" which

Signed: 

Taken by: *Kate Cockburn*

shows the increase in Rozelle median sale prices for houses in the period from August 2001 to August 2021.

The Oakleigh Property

55. I note that the property located at 8-12 Natalia Avenue, Oakleigh South, Victoria, 3167 and part Common Property PS 716735J being the land now comprised in Certificate of Title Volume 12298 Folio 008 (**Oakleigh Property**) was referred to in the letter from Allens to Fortis Law dated 10 August 2021, a copy of which is referred to above and at pages 227 to 229 of CMM-10.
56. On 17 August 2021, at 8:10pm, I received a letter from Mr Nehme in relation to a contract for sale in relation to the Oakleigh Property, in respect of which Mr Tesoriero had entered into a contract to purchase. A copy of this letter is at pages 624 to 625 of CMM-10.
57. By further emails on 17 August 2021, Mr Nehme provided a copy of the contract for sale of the Oakleigh Property. A copy of this email chain and the contract for sale is at pages 626 to 741 of CMM-10.
58. On 19 August 2021 at 9.55am, MinterEllison sent a letter to Fortis Law in relation to the Oakleigh Property. A copy of that letter from MinterEllison to Fortis Law dated 19 August 2021 is at pages 742 to 743 of CMM-10.
59. The contract for the purchase of the Oakleigh Property was not disclosed in the Assets Affidavit.
60. On 19 August 2021 at 4.13pm, I received an email from Mr Nehme in response to the 19 August 2021 letter. A copy of that email and its attachments is at pages 744 to 769 of CMM-10.
61. On 20 August 2021, further correspondence was exchanged between MinterEllison and Fortis Law in relation to the Oakleigh Property as follows:
- (a) at 11.34am, Mr Sommer sent an email to Mr Nehme which expressed concerns in relation to the disclosures by Mr Tesoriero in the Assets Affidavit and in the 19 August 2021 letter;
 - (b) at 12.20pm, Mr Sommer received an email from Mr Nehme;
 - (c) at 1.47pm, Mr Sommer sent a further response to Mr Nehme.
- A copy of an email chain with the three 20 August 2021 emails is at pages 770 to 772 of CMM-10.

Signed: 

Taken by: *Kate Cockburn*

Additional documents

62. By information request to the Liquidators under the IPSC, MinterEllison has been provided with certain emails and company records for FGFS, Forum Finance and other entities within the Forum Group of companies. I note that a document review task is underway in respect of those documents, and that the review process undertaken to date has identified among others the following documents that refer to the Rozelle Property :
- (a) an email from Louise Agostino to Mr Tesoriero dated 17 January 2018, which attached a rental appraisal for the Rozelle Property. The rental appraisal was for rent in the amount of \$2,600 per week (x52 = \$135,200 per annum), a copy of which is attached at pages 773 to 775 of CMM-10;
 - (b) an email from Tony Bouchahine to Mr Tesoriero and Mr Papas dated 19 April 2018 which says *"I have transferred \$15,000 out of Forum Group Financial Services and put it into Margaret St account"*. A copy of this email (without annexures) is at page 776 of CMM-10;
 - (c) an signed copy of a lease agreement between 23 Margaret Street and Forum Group Pty Ltd showing that Forum Group Pty Ltd was to lease the Rozelle Property for two years commencing 1 May 2018 for the amount of \$148,000 per annum. This lease was not disclosed in the Assets Affidavit and it is not known if Forum Group Pty Ltd continued to lease the Rozelle Property after April 2020. A copy of this lease is at pages 777 to 799 of CMM-10;
 - (d) an email from Ben Whitten of Fort Matilda dated 27 February 2020 titled "FGFS Upcoming Cashflow Requirements". The email attached a spreadsheet titled "FGFS Settlement Cashflow" and a spreadsheet titled "FGFS Pty Summary". The "FGFS Pty Summary" records:
 - (i) the Rozelle Property with a "FM Value" of \$4,100,000; a "Current Net Rent" of \$148,000 per annum and a "Debt" of \$2,700,000; and
 - (ii) the XOXO with a "FM Value" of \$1,800,000 with no recorded debt.
 A copy of this email and its attachments is at pages 800 to 807 of CMM-10;
 - (e) an email dated 30 July 2020 from Brandon Chin, Accountant of FGFS to Mr Tesoriero with the subject "Updated Spreadsheet – 30.07.20" attaching a copy of an excel spreadsheet titled "Outstanding and Recurring Payments for BP & VT.xlsx". A copy of this email and its attachment is at pages 808 to 814 of CMM-10;

Signed:



Taken by:

Kate Cockburn

- (f) an email dated 24 February 2021 from Brandon Chin, Accountant of FGFS to Mr Tesoriero with the subject "Updated Spreadsheet and Payments – 24.02.21" attaching a copy of an Excel spreadsheet titled "Outstanding and Recurring Payments for BP & VT.xlsx" and a Comma Separated Value file titled "Payment Register Report - 24.02.21.csv" (**24 February 2021 Email**). A copy of the 24 February 2021 Email is at pages 815 to 827 of CMM-10; and
- (g) an email dated 28 June 2021 from Fiona Yang of Forum to Mr Tesoriero, copied to Louise Agostino and Eloise Orlandini of Forum, with the subject "Important Payments due in this week" (**28 June Email 2021**). A copy of the 28 June 2021 Email is at page 828 of CMM-10.

Risk of dissipation of worldwide assets and sale of the Rozelle Property at an undervalue

63. As at the time of swearing this affidavit:

- (a) Mr Tesoriero has indicated his and Mangusta's general agreement to the appointment of the Liquidators as receivers and managers of the "XOXO" motor yacht and certain other property, but has not agreed to the proposed form of draft short minutes of order proposed by the Liquidators in this regard (**Draft McGrathNicol Receiver Orders**);
- (b) Mr Tesoriero, despite making statements by his solicitors that he agrees to the freezing orders made by the Court being varied to extend to his worldwide assets, has not agreed to the form draft short minutes of order proposed by Westpac (**Draft Worldwide Freezing Orders**); and
- (c) Mr Tesoriero and 23 Margaret Street have not agreed to Westpac's request that its nominated valuer be given access to the Rozelle Property to conduct a valuation, nor have they agreed to Westpac's request for an undertaking in the form of the draft short minutes of order proposed by Westpac (**Draft 23 Margaret Street Undertakings**).

64. Westpac is concerned that, by reason of the conduct of Mr Tesoriero and 23 Margaret Street by:

- (a) failing to consent to the Draft McGrathNicol Receiver Orders;
- (b) failing to consent to the Draft Worldwide Freezing Orders; and
- (c) denying Westpac's nominated valuer to be granted access to the Rozelle Property to conduct an accurate valuation, and failing to consent to Westpac's request for an undertaking in the form of the Draft 23 Margaret Street Undertakings;

Signed: 

Taken by: *Kate Cockburn*

there is a real risk that:

- (d) Mr Tesoriero will attempt to dissipate or dispose of his worldwide assets, including his beneficial interest in the "XOXO" motor yacht; and
- (e) 23 Margaret Street will attempt to sell the Rozelle Property at an undervalue to an associate or another person who will hold an interest in the Rozelle Property for Mr Tesoriero,

which might otherwise reduce the funds available to satisfy any judgment obtained against them by the applicants.

65. In the above material facts and circumstances, I respectfully request that the Court grant the relief sought by the applicants in the interlocutory application.

Sworn by the deponent
at Sydney
in New South Wales
on 25 August 2021

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)
)

Signature of deponent

Before me: Kate Cockburn

Kate Cockburn

Signature of witness

Solicitor
Level 40, Governor Macquarie Tower, One
Farrer Place NSW 2000.

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:

Drivers License

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

Signed:

Taken by:

Schedule of Parties

No. NSD616/2021

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

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

Signed: Taken by:

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
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