

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 14/07/2021 8:57:40 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: Affidavit - Form 59 - Rule 29.02(1)
File Number: NSD681/2021
File Title: SMBC LEASING AND FINANCE, INC. ARBN 602 309 366 v FORUM ENVIRO (AUST) PTY LTD (VOLUNTARY ADMINISTRATORS APPOINTED) ACN 607 484 364 & ANOR
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



Sia Lagos

Dated: 14/07/2021 9:27:46 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.

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. of 2021

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

SMBC Leasing and Finance, Inc. Sydney Branch ABN 88 327 596 442

Applicant

Forum Enviro (Aust) Pty Ltd (voluntary administrators appointed) ACN 607 484 364

First Respondent

Basile Papadimitriou

Second Respondent

Affidavit of: **Michael Timpany**
Address: Level 40, Chifley Tower, 2 Chifley Square NSW 2000
Occupation: Director, SMBC Leasing and Finance, Inc. Sydney Branch
Date: 13 July 2021

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Filed on behalf of: SMBC Leasing and Finance Inc. Sydney Branch (Applicant)
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I Michael Timpany, Director, Level 40, Chifley Tower, 2 Chifley Square NSW 2000, say on oath:

1. I am employed by the Applicant, SMBC Leasing and Finance, Inc. Sydney Branch (**SMBC L&F**), and my job title is "Director". I am authorised to make this affidavit of behalf of the Applicant.
2. I make this affidavit in support of the Originating Application filed on 13 July 2021 seeking, amongst other orders, that the First Respondent be wound up and liquidators appointed under the *Corporations Act 2001* (Cth).
3. Exhibited to me at the time of swearing this affidavit is a paginated bundle of documents marked "**MT1**", which I refer to in this affidavit by reference to page numbers at the bottom right hand corner.
4. I swear this affidavit to be true and correct to the best of my own knowledge, information and belief. Where indicated otherwise, I depose to matters on the basis of information provided by another person and in the belief that the source of my information is true and correct.

Background

5. SMBC L&F is engaged in the business of, amongst other services, providing financing for our client's leasing arrangements in Australia. My role of Director at SMBC L&F is to originate and execute leasing and asset-based finance transactions consistent with the objectives of SMBC L&F and its parent, Sumitomo Mitsui Banking Corporation (**SMBC**). I re-joined SMBC L&F in April 2020 having previously been employed by SMBC L&F from September 2017 until July 2019. In the intervening period I worked for another company.
6. Part of my role also involves (and previously involved) managing these transactions, for example, in circumstances where there may be performance issues under the contracts, such as a missed payment. In the event that there was a missed payment, I would receive notification from a team member of the SMBC L&F Lease Administration team based in London..
7. Since 2018, SMBC L&F has been a party to various receivables financing transactions involving the First Respondent, Forum Enviro (Aust) Pty Ltd (voluntary administrators appointed) (**Forum Enviro**). I was involved in setting up and finalising these transactions with Forum Enviro.

8. Basile Papadimitriou (also known as Bill Papas) (**Mr Papas**), is the sole director and secretary of Forum Enviro.
9. I have read the affidavit of Roger Dobson sworn on 13 July 2021 (**Dobson Affidavit**) and its accompanying annexures and make reference to the material within the Dobson Affidavit and the Exhibit to this affidavit.

Non-payment under the 2018 MRASA and 2020 MRASA

10. I refer to the 2018 MRASA and 2020 MRASA and related transactional documents referred to in the Dobson Affidavit. SMBC L&F paid to Forum Enviro a total of \$29,709,714.14 under Offer Letters issued under the 2018 MRASA and a total of \$83,993,909.47 under the 2020 MRASA. The total amount paid by SMBC L&F as a result of the Offer Letters issued pursuant to both the 2018 MRASA and the 2020 MRASA is \$113,703,623.61. Those transactional documents required Forum Enviro (including as agent for Flexirent) to make payments to SMBC L&F on a monthly basis, on the last business day of the month, of the amounts it had collected from Veolia Environmental Services (Australia) Pty Ltd (**Veolia**) under the various leasing arrangements referred to in the Dobson Affidavit.
11. Prior to 30 June 2021, I recall being informed on one occasion only in relation to a missed payment by Forum Enviro under the 2018 MRASA and/or 2020 MRASA. In that instance, payment was subsequently promptly made on the same day that I contacted Forum Enviro seeking payment.
12. On 1 July 2021, I was informed by Omer Ahmed from the SMBC L&F Loan Administration team based in London, via email, that SMBC L&F did not receive the Veolia payments under the 2018 MRASA and 2020 MRASA that were due on 30 June 2021 totalling \$2,139,000.00 (**Missed Payment**).
13. Upon learning of the Missed Payment, I sent an email to Tony Bouchahine (CFO at Forum), Bill Papas and Alex Colbert (a part-time Consultant at Forum) on 1 July 2021 at 7:55 am, notifying them that I had been informed of Forum Enviro's missed payment for the month of June and requesting that they urgently advise by providing the payment confirmation and/or arrange payment as soon as possible (**Missed Payment email**). **Exhibited at page 9 of Exhibit MT1** is a copy of the Missed Payment email on 1 July 2021.
14. The Missed Payment email resulted in a series of emails to and from various personnel of the Forum group of companies as follows:

- (a) I immediately received an “out of office” automated response from Tony Bouchahine. Upon receiving the out of office email, I forwarded my Missed Payment email to Kathleen Wang (an accountant at Forum) at 8.12 am on 1 July 2021. **Exhibited at pages 10 of Exhibit MT1** is copy of my email to Kathleen Wang. At 11.21 am, I also forwarded the Missed Payment email to Brandon Chin (previously from the accounts team of Forum Group). **Exhibited at page 11 of Exhibit MT1** is a copy of that email.
- (b) In response to my emails to Kathleen and Brandon, at 12:40 pm on 1 July 2021, I received an email from Fiona Yang, Assistant Accountant of Forum Group Financial Services Pty Ltd. In that email, Ms Yang stated that “Brandon is not working with us now”, that “Tony is on leave”, and that Craig Rollinson oversees all of the payments. **Exhibited at page 14 of Exhibit MT1** is a copy of this email.
- (c) I responded to Ms Yang’s email at 12:43 pm on the same date, stating that I would appreciate urgent attention to the late payment. Ms Yang responded a few minutes later stating she will get back to me ASAP once she gets payment confirmation. A few minutes later, I forwarded her email and the chain of emails referred to above to Alex Colbert. For the 2020 MRASA transactions, Alex Colbert has been the key contact for finalising the transactions, so I felt it was important to keep him updated on my dealings with the Forum Group. **Exhibited at pages 13 to 18 of Exhibit MT1** are copies of these emails.
- (d) At 3.02 pm on 1 July, I sent Ms Yang and Mr Rollinson a follow up email, querying whether payment had been made. In response, Ms Yang and I exchanged a series of emails about the quantum of the amount that was due for the month of June. **Exhibited at pages 19 to 22 of Exhibit MT1** are copies of these emails.
- (e) At 9:13 am on 2 July 2021, I sent a further email to the general accounts email at Forum Group (accounts@fgfs.net.au), Mr Rollinson and Mr Colbert, attaching the invoices detailing the payments that were due on 30 June 2021. **Exhibited at pages 23 to 32 of Exhibit MT1** is a copy of this email and its attachments.
15. Later on 2 July, at 10:29 am, I received an email from Bill Papas of Forum Enviro, alerting me for the first time that there was an issue with Forum being able to fulfil its payment obligations for the month of June. Mr Papas’ email provided:

"I want to inform you that significant issues have arisen on our business that have led to Forum Finance unable to meet the timing of its obligations for this month's receivables.

We are currently working with third parties to advise as to next steps and anticipate an update provided to you by COB Monday 5th July.

We kindly ask to wait till then before any action is taken by SMBC in relation to the receivables as we are seeking to find commercial terms suitable for all parties.

Our team will be in touch prior to that timeframe with any updates."

16. I responded to Mr Papas' email on that same date, requesting that he provide an update on the nature of the significant issues, and noting that SMBC L&F reserved its rights. **Exhibited at pages 33 to 34 of Exhibit MT1** are copies Mr Papas' email and my response.
17. I did not receive a response from Mr Papas, or anyone from Forum, to my email.
18. SMBC L&F has also not received any money from Forum Enviro in relation to the Missed Payment.
19. With the assistance of the SMBC L&F teams in Australia and London, I have now calculated the total remaining receivables that SMBC L&F would have received if performance under both the 2018 MRASA and the 2020 MRASA had continued as required under those agreements. In this respect:
 - (a) the Missing Payment for June 2021 (referred to at paragraph [11] above) is made up of \$620,400 (inc GST) under the 2018 MRASA and \$1,518,600 under the 2020 MRASA; and
 - (b) the gross value of the total remaining receivables, from July 2021 onwards, is \$14,695,500 (plus GST, if any) pursuant to the 2018 MRASA, and \$82,281,200 (plus GST, if any) pursuant to the 2020 MRASA.
20. The figures at paragraph [19] above do not include the break costs, transactional costs or any other damages that may be claimable by SMBC L&F against Forum Enviro and others.

Allegations of fraud relating to the Forum Group

21. Around lunchtime on 2 July 2021, I first became aware through reports in the media that legal proceedings had been commenced by Westpac against Forum Finance Pty Ltd (ACN 153 301 172) (**Forum Finance**) alleging that a significant fraud had been committed by Forum Finance. I subsequently became aware that Societe Generale had commenced legal proceedings against Forum Finance alleging that a significant fraud had been committed by Forum Finance. I also became aware that Westpac and Societe Generale were seeking freezing orders over any assets held by Forum Finance.
22. This information, together with the Missed Payment by Forum Enviro, and the email that I received from Mr Papas referred to above, caused me concern as to SMBC L&F's position in respect of its arrangements with Forum Enviro.
23. For this reason, on 5 July 2021, I had a telephone conversation with Bianca Spata, Group Treasurer of Humm Group Limited, which is the parent company of Flexirent Capital Pty Ltd (**Flexirent**). As explained in the Dobson Affidavit, the 2018 MRASA was between SMBC L&F and Flexirent as principal, and Forum Enviro acting as Flexirent's agent both in entering that transaction and collecting the underlying receivables from Veolia.
24. The purpose of my call with Ms Spata was to seek Flexirent's consent to contact Veolia directly to discuss the underlying lease agreements allegedly entered into between Veolia and Forum Enviro as Flexirent's agent. In circumstances in which SMBC L&F's position is undisclosed to Veolia, under the terms of the 2018 MRASA, written consent from Flexirent was required for me to approach Veolia directly. During that call, Ms Spata stated that I should send through a request for consent letter to Flexirent and she would arrange for that request to be reviewed and approved in writing. I sent Ms Spata the request for consent and that consent was subsequently granted.
25. I participated in a call on 5 July 2021 between myself and Preet Brar, who I understand is currently the Country Director and Chief Executive Officer at Veolia India. I further understand that Ms Brar was formerly the Chief Financial Officer of Veolia Environmental Services (Australia) Pty Ltd (**Veolia**) from 1 February 2018 until 31 May 2021 (being the very period in which all of SMBC L&F's transactions involving Forum Enviro had occurred). Ms Brar's name appeared as representing Veolia on many of the documents which Forum Enviro had provided to SMBC L&F, to which Veolia appeared to be a party. I was advised by Raymond Ng, Head of Multinational Corporations, SMBC Australia, that

Ms Brar was the most appropriate person to contact at Veolia in the circumstances. Also on the call was Raymond Ng and Andrew Dick, another Director at SMBC L&F.

26. On the call, I explained the situation unfolding in Australia in relation to the Forum Group and provided an overview of SMBC L&F's financing arrangements with Flexirent and Forum Enviro and the various Technology Licence Agreements between Veolia and Forum Enviro that underpinned the finance provided by SMBC L&F.
27. Ms Brar responded with words to the effect that:

“Veolia has a small relationship with Forum Enviro. It has approximately 230 waste digester units on lease and had some Surfacide Helios Systems on trial use in mid-2020. In the circumstances, it seems unlikely that SMBC L&F had funded any real contracts between Veolia and Forum Enviro.

I do not think that Veolia entered into any new contracts with Forum Enviro in July 2020 when the Master Technology Licence Agreement was executed nor am I aware that Veolia had entered into any contracts with Forum Enviro since.

I did not send any emails to Mr Papadimitriou confirming receipt of or acknowledging the assignment of receivables to SMBC L&F during the relevant period and, to the extent such emails existed, in my view, they are likely forged”.

28. I stated on the call that SMBC L&F would provide Veolia with copies of all of the relevant documents and correspondence that SMBC L&F had been provided by Forum Enviro and Ms Brar stated that Veolia would review those documents to ascertain their authenticity.
29. On 7 July 2021, I sent five emails to Ms Brar, Veolia's Chief Legal Officer, Jane Sandilands, and a Mr Legrand of Veolia, containing a schedule and copies of numerous contracts provided to SMBC L&F in 2020 and 2021 that had purportedly been executed by Veolia and Forum Enviro, including the Waste Management and Health Management Technology Licence Agreements and various Notices of Assignment purportedly issued to Veolia by Forum Enviro, each of which are referred to in and annexed to the Dobson Affidavit. The schedule also identified correspondence purporting to be from representatives of Veolia (including Ms Brar herself) confirming receipt of the Notices of Assignment. I attached the documents identified in the schedule for review by Ms Brar and Ms Sandilands.

30. Due to the size of the attachments, I sent five emails to Veolia on 7 July 2021 at 3:29 pm, 3.30 pm, 3:31 pm, 3.32 pm and 5:30 pm. **Exhibited at pages 35 to 171 of Exhibit MT1** are copies of my five emails to Veolia on 7 July 2021 and the attachments.
31. The same day, on 7 July 2021, I received an email from Ms Sandilands at Veolia stating, amongst other things, that Ms Brar would review all of the contracts and email communications provided earlier that day for the purpose of checking their validity, however, the contracts and email communications that Ms Brar and Ms Sandilands had already reviewed appeared to be forged. **Exhibited at pages 172 to 173 of Exhibit MT1** is a copy of the email from Ms Sandilands on 7 July 2021.
32. On 8 July 2021, I received an email from Ms Brar at Veolia in which she stated that she had not signed any of the documents that I had provided to her the previous day (nor had she authorised the use of her electronic signature by another person) and that she had not sent any of the emails I had provided which purported to be from her (having attempted to cross reference the emails with her electronic mailbox). **Exhibited at page 172 of Exhibit MT1** is a copy of the email from Ms Brar on 8 July 2021.
33. The same day, on 8 July 2021, I sent a further email to Ms Brar, Ms Sandilands and Mr Legrand at Veolia, attaching the five Technology License Agreements purportedly executed by Ms Brar on behalf of Veolia that had been provided to SMBC L&F pursuant to the terms of the 2018 MRASA. **Exhibited at page 174 of Exhibit MT1** is a copy of my email to Veolia on 8 July 2021.
34. Later that day, I received an email from Ms Brar stating that she had not signed any of the Technology License Agreements attached to my email earlier that day and that she had not authorised the use of her electronic signature by another person. **Exhibited at pages 175 to 176 of Exhibit MT1** is a copy of the second email from Ms Brar on 8 July 2021.
35. In accordance with paragraph 4 of the Federal Court of Australia's Special Measures Information Note 'Special Measures in Response to COVID-19 (SMIN-1)', I swear this affidavit by typing my name in the relevant space below. I will, if required by the Court, later swear this affidavit before a qualified witness when circumstances allow.

Sworn by the deponent
at Sydney
in New South Wales
on 13 July 2021
Before me:

Michael Timpany

.....
Signature of deponent

.....
Signature of witness

Name:

Qualification: