

## NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 6/08/2021 4:59:57 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: Non-Prescribed Pleading  
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: 9/08/2021 11:45:02 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.

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 15  
Rules 8.01(1); 8.04(1)



## Amended Originating application

No. NSD681/2021

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

### **SMBC Leasing and Finance, Inc. ARBN 602 309 366**

Applicant

### **Forum Enviro (Aust) Pty Ltd (in provisional liquidation) ACN 607 484 364 and others identified in the Schedule**

Respondents

To the Respondents

The Applicant applies for the relief set out in this application.

The Court will hear this application, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, then the Court may make orders in your absence.

You must file a notice of address for service (Form 10) in the Registry before attending Court or taking any other steps in the proceeding.

**Time and date for hearing:**

**Place:**

The Court ordered that the time for serving this application be abridged to

Date:

Signed by an officer acting with the authority  
of the District Registrar

Filed on behalf of (name & role of party)

Prepared by (name of person/lawyer) Maria Yiasemides

Law firm (if applicable) Jones Day

Tel (02) 8272 0500 Fax (02) 8272 0599

Email myiasemides@jonesday.com

**Address for service** Level 41, 88 Phillip Street, Sydney, NSW 2000  
(include state and postcode)

## Details of claim

On the grounds stated in the statement of claim, the Applicant claims:

### As against the First Respondent

1. An order that the First Respondent be wound up under the provisions of the *Corporations Act 2001* (Cth) (**Corporations Act**).
2. An order that Jason Preston and Jason Ireland of Level 12, 20 Martin Place, Sydney NSW 2000 jointly and severally, or some other fit and proper person, be appointed liquidators of the First Respondent, Forum Enviro (Aust) Pty Ltd .
3. An order that the Plaintiff's costs of the winding up application be costs in the liquidation of the First Respondent.
- 3A. A declaration that the First Respondent holds on trust for the Applicant all funds that it has received that were paid by the Applicant (whether directly or via Flexirent Capital Pty Ltd (**Flexirent**)) in connection with the Receivables Contracts, or the traceable property acquired using those funds.
- 3B. An order that the First Respondent disclose to the Applicant the amount of funds paid by the Applicant or Flexirent in connection with the Receivables Contracts that it has received or controls through related entities and all facts within its knowledge as to the present whereabouts of those funds or the traceable property acquired using those funds.
- 3C. An order that the First Respondent account to the Applicant for all funds that it has received or controls through related entities that were paid by the Applicant or Flexirent in connection with the Receivables Contracts.
- 3D. Judgment for the Applicant against the First Respondent in the amount of \$88,007,623.61.
- 3E. An order that the First Respondent pay equitable compensation.
- 3F. An order that the First Respondent pay damages for the tort of unlawful means conspiracy.
- 3G. An order that the First Respondent pay damages for deceit.
- 3H. An order that the First Respondent pay damages for breach of contract.
- 3I. An order that the First Respondent pay damages pursuant to section 236 of the Australian Consumer Law set out in Schedule 2 of the Competition and Consumer Act 2010 (Cth) (**Australian Consumer Law**).

- 3J An order that the First Respondent pay damages pursuant to section 12GF of the Australian Securities and Investments Commission Act 2001 (Cth) (**ASIC Act**), further or alternatively pursuant to section 1041I of the Corporations Act.

**As against the Second Respondent**

4. Judgment for the Applicant against the Second Respondent in the amount of \$88,007,623.61.
5. A declaration that the Second Respondent holds on trust for the Applicant all funds that he has received or controls that were paid by the Applicant (whether directly or via Flexirent) in connection with the Receivables Contracts, or the traceable property acquired using those funds.
6. An order that the Second Respondent disclose to the Applicant the amount of funds paid by the Applicant (whether directly or via Flexirent) in connection with the Receivables Contracts that he has received or controls and all facts within his knowledge as to the present whereabouts of those funds or the traceable property acquired using those funds.
7. An order that the Second Respondent account to the Applicant for all funds that he has received or controls through related entities that were paid by the Applicant in connection with the Receivables Contracts.
8. An order that the Second Respondent pay equitable compensation.
9. An order that the Second Respondent pay damages for the tort of unlawful means conspiracy.
10. An order that the Second Respondent pay damages in deceit.
11. An order that the Second Respondent pay damages pursuant to section 236 of the Australian Consumer Law.
12. An order that the Second Respondent pay damages pursuant to section 12GF of the ASIC Act.
14. Interest on judgment pursuant to section 52 of the Federal Court Act and rule 39.06 of the *Federal Court Rules 2011* (Cth).

**As against the Third Respondent**

- 15A. A declaration that the Third Respondent holds on trust for the Applicant all funds that it has received that were paid by the Applicant (whether directly or via Flexirent) in connection with the Receivables Contracts, or the traceable property acquired using those funds.

- 15B. An order that the Third Respondent disclose to the Applicant the amount of funds paid by the Applicant or Flexirent in connection with the Receivables Contracts that it has received or controls through related entities and all facts within its knowledge as to the present whereabouts of those funds or the traceable property acquired using those funds.
- 15C. An order that the Third Respondent account to the Applicant for all funds that it has received or controls through related entities that were paid by the Applicant or Flexirent in connection with the Receivables Contracts.
- 15D. Judgment for the Applicant against the Third Respondent in the amount of \$88,007,623.61.
- 15E. An order that the Third Respondent pay equitable compensation.
- 15F. An order that the Third Respondent pay damages for the tort of unlawful means conspiracy.
- 15G. An order that the Third Respondent pay damages for deceit.
- 15H. An order that the Third Respondent pay damages for breach of contract.
- 15I. An order that the Third Respondent pay damages pursuant to section 236 of the Australian Consumer Law set out in Schedule 2 of the Australian Consumer Law.
- 15J. An order that the Third Respondent pay damages pursuant to section 12GF of the ASIC Act, further or alternatively pursuant to section 1041I of the Corporations Act.
- 15K. An order that the Third Respondent be wound up under the provisions of the Corporations Act.
- 15L. An order that Jason Preston and Jason Ireland of Level 12, 20 Martin Place, Sydney NSW 2000 jointly and severally, or some other fit and proper person, be appointed liquidator of the Third Respondent.

**As against each Respondent**

- 15M. Interest, including interest up to judgment pursuant to section 52(2)(a) of the *Federal Court Act 1976* (Cth) (**Federal Court Act**).
- 15N. Interest on judgment pursuant to section 52 of the Federal Court Act and rule 39.06 of the Federal Court Rules 2011 (Cth).
- 15O. Costs.
- 16. Such further or other orders as the Court deems fit.

In this originating application, the **Receivables Contracts** means any arrangement between the First Respondent or the First Respondent acting as agent for Flexirent Capital Pty Ltd (ABN 93

064 046 046), pursuant to which the Applicant sold the receivables under contracts purportedly entered for the purchase of equipment between the First Respondent (including as agent) and Veolia Environmental Services (Australia) Pty Ltd (ABN 20 051 316 584).

**Applicant's address**

The Applicant's address for service is:

Place: Level 41, 88 Phillip Street, Sydney NSW 2000

Attention: Maria Yiasemides and Roger Dobson

Email: [myiasemides@jonesday.com](mailto:myiasemides@jonesday.com); [rdobson@jonesday.com](mailto:rdobson@jonesday.com)

The Applicant's address is:

Place: Level 40, The Chifley Tower, 2 Chifley Square, Sydney, NSW 2000

Attention: John Gilroy

Email: [john\\_gilroy@au.smbc.co.jp](mailto:john_gilroy@au.smbc.co.jp)

**Service on the Respondent**

It is intended to serve this application on all Respondents.

Date: 6 August 2021



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Signed by Maria Yiasemides  
Lawyer for the Applicant

**Schedule**

No. NSD681/2021

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

**Applicant**

Applicant: SMBC Leasing and Finance, Inc. ARBN 602 309 366

**Respondents**

First Respondent Forum Enviro (Aust) Pty Ltd (in provisional liquidation) ACN  
607 484 364

Second Respondent Basile Papadimitriou

Third Respondent Forum Enviro Pty Ltd (in provisional liquidation) ACN 168 709  
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