

NOTICE OF FILING

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Details of Filing

Document Lodged:	Outline of Submissions
File Number:	NSD747/2021
File Title:	IN THE MATTER OF THE FORUM GROUP OF COMPANIES PTY LIMITED ACN 151 964 626 (ADMINISTRATORS APPOINTED) & ORS
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



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

Dated: 28/07/2021 10:22:48 AM AEST

Registrar

Important Information

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In the matter of The Forum Group of Companies Pty Ltd ACN 151 964 626
(Administrators Appointed)
Federal Court of Australia
NSD747/2021

OUTLINE OF SUBMISSIONS OF THE PLAINTIFFS

Introduction

- 1 By Originating Process dated 23 July 2021, the First to Twenty-Fourth Plaintiffs (**Plaintiffs**), being companies in administration, seek orders pursuant to s 461(1)(k) of the *Corporations Act 2001* (Cth) (**Corporations Act**) that each be wound up on the just and equitable ground, and pursuant to s 472(1) of the Act, that Jason Preston and Jason Ireland of McGrathNicol be appointed as joint and several liquidators. The Plaintiffs also seek orders pursuant to s 447A of the Corporations Act and s 90-15 of the Insolvency Practice Schedule (Corporations) (**IPSC**) that the administration of the companies come to an end upon the making of a winding up order.
- 2 The Plaintiffs rely on the affidavits of Jason Ireland affirmed 23 July 2021 (**Ireland Affidavit**) and 27 July 2021 (**Second Ireland Affidavit**), and Exhibit JI-1 to the Ireland Affidavit, on this application. Proposed short minutes of order setting out the orders sought by the Plaintiffs are enclosed with these submissions.
- 3 In summary terms, the principal reason for this application is that it is the view of the current administrators of the Plaintiffs that the administrations have no further utility but substantial costs relating to conveying the second creditors' meetings will be incurred if the administrations continue. It has become apparent that there is little to no prospect that a deed of company arrangement will be proposed by a party willing to purchase the assets of the Plaintiffs, and that it is not at all realistic that the Plaintiffs will be returned to the control of their director, Mr Basile Papadimitriou (**Mr Papas**).¹ It is submitted that where the objects of Pt 5.3A of the Corporations Act cannot be achieved, it is in the interests of the creditors of the Plaintiffs that they each be immediately wound up to avoid incurring the unnecessary costs and expenses of a Pt 5.3A administration for little to no ultimate benefit.

¹ ASIC Current & Historical Extracts for each of the Plaintiffs at Ex-JI-1 pp 1 to 189.

The Plaintiffs

4 The Plaintiffs are 24 separate companies, each in administration. The current administrators of each company are Jason Preston, Jason Ireland and Katherine Sozou of McGrathNicol (**Administrators**). The Administrators were appointed to the Plaintiffs on 21 July 2021 following the first creditors' meetings of each of the Plaintiffs (at which time resolutions were passed to replace the Plaintiffs' former administrators with the Administrators).² In respect of the Tenth Plaintiff, that replacement occurred on 22 July 2021.³

5 Based on investigations to date, Mr Ireland gives evidence as to the activities of each of the Plaintiffs.⁴ Those activities can be summarised as follows:

- (a) (**Non-Trading Entities**) The vast majority of Plaintiffs (being the First, Sixth to Ninth, Eleventh to Seventeenth, and Nineteenth to Twenty-Fourth Plaintiffs), do not conduct businesses or hold land or other assets (except possibly intercompany receivables).⁵
- (b) (**Previously Trading Entities**) The Tenth and Eighteenth Plaintiffs previously carried on business, however as at the date of this application, no longer trade. The Tenth Plaintiff carried on an information technology and managed print services business, however prior to the appointment of the Administrators, the former administrators sold the goodwill and certain contracts (along with a transfer of some of the employees of that business) to a purchaser. Following that sale, the balance of the employees were made redundant.⁶ The Eighteenth Plaintiff was engaged in sustainable food waste services, although the former administrators made all employees redundant on or about 12 July 2021, such that the business has ceased to operate.⁷
- (c) (**Land Owning Entities**) The Second to Fifth Plaintiffs own real estate, and one or more of those properties are leased to third parties.⁸

² Ireland Affidavit at [7].

³ Ireland Affidavit at [8].

⁴ Second Ireland Affidavit at [5]

⁵ Ireland Affidavit at [19].

⁶ Ireland Affidavit at [12].

⁷ Ireland Affidavit at [14], [15].

⁸ Ireland Affidavit at [16].

Creditor position of each of the Plaintiffs

- 6 Mr Ireland gives evidence as to the creditors (and their prospective claims) against each of the Plaintiffs, based on the information provided by the Plaintiffs' former administrators.⁹ He indicates that over 140 proofs of debt were received, and that even excluding claims from major financiers, he is not aware of any of the Plaintiffs holding sufficient assets to pay out the claims that were admitted for voting purposes at the first meeting of creditors.¹⁰
- 7 By way of a circular, notice of these proceedings was provided to the creditors of the Plaintiffs (which were identified from the books and records of the various entities).¹¹

Legal principles

- 8 Turning next to the applicable legal principles. This application is brought under s 461(1)(k) of the Corporations Act. That section provides in substance that the Court may order the winding up of a company if it is of the opinion that it is just and equitable to do so. Section 462(2) confers standing to make such an application on various parties, including the company itself.¹² It has been held that administrators, by dint of their broad powers pursuant to ss 437A(1)(d), 437B and 442A(c) of the Corporations Act, have power to cause the companies to which they are appointed to bring such applications.¹³ It is those provisions and powers upon which the Administrators and the Plaintiffs rely to bring these proceedings.
- 9 Relief under s 461(1)(k) is a matter of discretion, and the Court is not restricted to exercising that discretion to particular factual categories; it is a question of fact in each case whether it is just and equitable to wind up the company.¹⁴ In that respect the categories are not closed or rigid.¹⁵ True it is that relief under s 461(1)(k) is more

⁹ Second Ireland Affidavit at [7].

¹⁰ Second Ireland Affidavit at [8].

¹¹ Second Ireland Affidavit at [10]-[12], Annexure A.

¹² Corporations Act s 462(2)(a).

¹³ *Re Freestyle Technology Ltd (Admins Apptd)* [2020] VSC 36 at [29]; *Re Hastie Group Ltd (No 4)* [2012] FCA 968 at [31]-[32]; *Re Willow Tree Retirement Village Pty Ltd and Anor* [2006] NSWSC 653 at [11]-[13].

¹⁴ *Re 1A Eden Pty Ltd* [2021] NSWSC 82 (Rees J) at [90]; *Re Catombal Investments Pty Ltd* [2012] NSWSC 775 at [20].

¹⁵ *Australian Securities and Investments Commission v Letten (No 10)* [2011] FCA 498 at [12]; *Australian Securities and Investment Commission v Storm Financial Ltd* (2009) 71 ACSR 81 at [65]; *Re Westbourne Galleries Ltd* [1973] AC 360.

readily granted where applicants can prove that the company is insolvent; however not doing so is not bar to relief.¹⁶

10 Relevantly, it is submitted that it is open to the Court to make a winding up order under s 461(1)(k) of the Corporations Act in circumstances where the administration of a company is no longer of any utility, or is of limited value (such as where there is little or no prospect of a deed of company arrangement being entered into, or of the company being returned to the control of its directors). In *Re Hastie Group Ltd* [2012] FCA 968, Emmett J made such orders, and brought the administrations of various companies to an end, in circumstances where, amongst other things, the administrators formed the view that no person would be willing to act as a director, there was no prospect of a deed of company arrangement being proposed, and creditors would not be prejudiced by the immediate winding up of the relevant entity.¹⁷ Also, in *Re Union Standard International Group Pty Ltd (Administrators Appointed) (No 5)* [2020] FCA 1335, Yates J made similar orders in circumstances where the administrators could not gain access to company records and the objects of Pt 5.3A could not be achieved.

11 Having regard to the above, the objects of Pt 5.3A of the Corporations Act provided for in s 435A of the Corporations Act are particularly apt and are worth noting in the context of the current proceedings:

The object of this Part, and Schedule 2 to the extent that it relates to this Part, is to provide for the business, property and affairs of an insolvent company to be administered in a way that:

- (a) maximises the chances of the company, or as much as possible of its business, continuing in existence; or
- (b) if it is not possible for the company or its business to continue in existence--results in a better return for the company's creditors and members than would result from an immediate winding up of the company.

12 Winding up relief on the just and equitable ground has also been granted where there is an absence of any prospect of the company continuing to operate.¹⁸

¹⁶ *Australian Securities and Investments Commission v Bilkurra Investments Pty Ltd* [2016] FCA 371 at [58].

¹⁷ *Re Hastie Group Ltd* above at [13].

¹⁸ *Bailey v Seneca Ltd, Re Seneca Textiles Ltd* [2020] FCA 242 at [28]; *CIC Insurance Ltd v Hannan & Co Pty Ltd* (2001) 38 ACSR 245 at [13].

- 13 Where companies in administration are wound up, the Court should also make orders bringing the administration to an end pursuant to s 447A of the Corporations Act and/or 90-15 of the IPSC, and for the costs of the application to be costs in the administrations.¹⁹

Winding up of the Plaintiffs

- 14 The Plaintiffs make the following submissions as to why the Court should exercise its discretion to wind up the Plaintiffs in the present circumstances.
- 15 *First*, it is highly unlikely that any person will propose a deed of company arrangement to purchase the assets of the Plaintiffs. The vast majority of Plaintiffs, being the Non-Trading Entities, are not trading and have no assets (other than possibly intercompany receivables). In the Administrators' view, there is no realistic prospect of a deed of company arrangement being proposed by a party wishing to acquire the assets of those entities.²⁰ As to the remaining Plaintiffs, being the Land Owning Entities, Mr Ireland gives evidence that in his experience there is no additional benefit or value to those entities remaining in administration, because a sale of land would not ordinarily occur by way of deed of company arrangement, but rather by way of an ordinary land sale (which could occur in a liquidation scenario in any event).²¹
- 16 *Second*, there is little to no prospect of the Plaintiffs being returned to the control of Mr Papas (being the sole director of each of the Plaintiffs). In *Westpac Banking Corporation v Forum Finance Pty Ltd* [2021] FCA 807, Lee J at [10] found that 'it appears Forum Finance has, by some means or another, been involved in a long-running, calculated and elaborate fraud ranking high in the catalogue of corporate misfeasance' and at [11] found that Mr Papas appears to be primarily responsible at least until recent times for the conduct of the affairs of Forum Finance. Mr Ireland gives evidence that based on his experience and his investigations to date he does not see any realistic or probable scenario in which he would be forming an opinion that it would be in the creditors' interests for the administrations of the Plaintiffs to end, and for the companies to be returned to the control of Mr Papas.²²

¹⁹ See, e.g., *Re Union Standard International Group Pty Ltd (Administrators Appointed) (No 5)* above at [61]; *Re Hastie Group Ltd* above.

²⁰ Ireland Affidavit at [20].

²¹ Ireland Affidavit at [17].

²² Ireland Affidavit at [23].

- 17 *Third*, having regard to the first and second submissions above, the Plaintiffs submit the objects of Pt 5.3A, as set out in s 435A of the Corporations Act, are plainly unlikely to be advanced by these entities remaining in administration.
- 18 *Fourth*, insofar as employee creditors are concerned, Mr Ireland gives evidence as to his experience with the Australian Government's Fair Entitlements Guarantee (**FEG**) Scheme, and that payments of entitlements to employees are not advanced until such time as the relevant companies are placed into liquidation. For that reason, a liquidation is more likely than an administration to advance their claims with FEG.
- 19 *Fifth*, the above submissions are fortified when the costs of the administrations are considered. Mr Ireland gives evidence that the costs and expenses of the administrations of the Plaintiffs, including for example the costs associated with undertaking investigations, preparing reports to creditors, distributing notices to approximately 600 creditors, tracking proxies, adjudicating proofs of debt and holding meetings through an electronic platform, would be in the range of \$200,000 to \$300,000.²³ Mr Ireland also gives evidence that, in his experience and in the current circumstances, he does not believe there would be any corresponding benefit to the Plaintiffs' creditors were those costs to be incurred.²⁴ Having regard to the unlikelihood of a deed of company arrangement being proposed, and the lack of any realistic or probable scenario in which the Plaintiffs will be returned to the control of Mr Papas, it is submitted that such costs would provide little to no further benefit to the Plaintiffs' creditors in an administration scenario, and can only be described as wasted costs, which could otherwise sensibly be put to good use in a liquidation scenario.

Conclusion

- 20 For those reasons, the Plaintiffs submit the Court should make orders in accordance with the short minutes of order enclosed with these submissions. Messrs Preston and Ireland have prepared consents to act as liquidators of each of the Plaintiffs, as required by r 5.5 of the Federal Court (Corporations) Rules.

²³ Ireland Affidavit at [22].

²⁴ Ireland Affidavit at [22(c)].

- 21 It is submitted costs of this application should be costs in each of the respective administrations of each of the Plaintiffs.

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28 July 2021

Short Minutes of Order

No. NSD 747/2021

Federal Court of Australia

District Registry: Sydney

Division: General

**IN THE MATTER OF THE FORUM GROUP OF COMPANIES PTY LIMITED ACN 151 964 626
(ADMINISTRATORS APPOINTED)
(ACN 151 964 626)**

**The Forum Group of Companies Pty Limited ACN 151 964 626 (Administrators
Appointed)** and others named in the Schedule

Plaintiffs

Judge: JUSTICE LEE

Date of order:

Where made: Sydney

THE COURT ORDERS THAT:

Winding up

1. Pursuant to s 447A of the *Corporations Act 2001* (Cth) (**Act**) and s 90-15 of the Insolvency Practice Schedule (Corporations), the administrations of the First to Twenty-Fourth Plaintiffs be brought to an end.
2. Pursuant to s 461(1)(k) of the Act, the First to Twenty-Fourth Plaintiffs be wound up on the basis that the Court is of the opinion that it is just and equitable.

Filed on behalf of (name & role of party)	The Plaintiffs listed in the Schedule, the Plaintiffs		
Prepared by (name of person/lawyer)	Chris Prestwich		
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3. Pursuant to s 472(1) of the Act, Jason Preston and Jason Ireland of McGrathNicol, Level 12, 20 Martin Place, Sydney NSW 2000, be appointed jointly and severally as liquidators of each of the First to Twenty-Fourth Plaintiffs.
4. Pursuant to s 467(3) of the Act, compliance with s 465A of the Act be dispensed with.
5. The requirements of rules 5.6 and 5.11 of the Federal Court (Corporations) Rules 2000 (Cth) be dispensed with.

Costs

6. The costs of and incidental to this application be costs in the respective administrations of each of the Plaintiffs.

Schedule

No. NSD 747/2021

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

Plaintiffs

- First Plaintiff: The Forum Group of Companies Pty Limited ACN 151 964 626 (Administrators Appointed)
- Second Plaintiff: 14 James Street Pty Ltd ACN 638 449 206 (Administrators Appointed)
- Third Plaintiff: 26 Edmonstone Road Pty Ltd ACN 622 944 129 (Administrators Appointed)
- Fourth Plaintiff: 5 Bulkara Street Pty Ltd ACN 630 982 160 (Administrators Appointed)
- Fifth Plaintiff: 6 Bulkara Street Pty Ltd ACN 639 734 473 (Administrators Appointed)
- Sixth Plaintiff: Aramia Holdings Pty Ltd ACN 114 958 717 (Administrators Appointed)
- Seventh Plaintiff: Eros Management Pty Ltd ACN 622 298 346 (Administrators Appointed)
- Eighth Plaintiff: Forum Direct Pty Ltd ACN 054 890 710 (Administrators Appointed)
- Ninth Plaintiff: Forum Fleet Pty Limited ACN 155 440 994 (Administrators Appointed)
- Tenth Plaintiff: Forum Group Pty Ltd ACN 153 336 997 (Receivers appointed) (Administrators Appointed)
- Eleventh Plaintiff: Forum Group (QLD) Pty Ltd ACN 103 609 678 (Administrators Appointed)
- Twelfth Plaintiff: Forum Group (VIC) Pty Ltd ACN 153 062 018 (Administrators Appointed)

Thirteenth Plaintiff: Imagetec Financial Services Pty Ltd ACN 111 978 182
(Administrators Appointed)

Fourteenth Plaintiff: Imagetec Solutions Australia Pty Ltd ACN 074 715 718
(Administrators Appointed)

Fifteenth Plaintiff: Intrashield Investment Group Pty Ltd ACN 645 578 829
(Administrators Appointed)

Sixteenth Plaintiff: Intrashield Pty Ltd ACN 133 426 534 (Administrators
Appointed)

Seventeenth Plaintiff: Iugis Investments Pty Ltd ACN 647 627 745 (Administrators
Appointed)

Eighteenth Plaintiff: Iugis Pty Ltd ACN 632 882 243 (Administrators Appointed)

Nineteenth Plaintiff: Iugis Waste Services Pty Ltd ACN 647 212 299
(Administrators Appointed)

Twentieth Plaintiff: Onesource Australia Holdings Pty Limited ACN 120 463 541
(Administrators Appointed)

Twenty-First Plaintiff: Orca Enviro Solutions Pty Ltd ACN 626 552 645
(Administrators Appointed)

Twenty-Second Plaintiff: Orca Enviro Systems Pty Ltd ACN 627 597 782
(Administrators Appointed)

Twenty-Third Plaintiff: Smartprint Fleet Management Pty Ltd ACN 132 807 080
(Administrators Appointed)

Twenty-Fourth Plaintiff: Spartan Consulting Group Pty Ltd ACN 168 989 544
(Administrators Appointed)

Date: