

## NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 14/06/2022 10:18:58 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: Defence - Form 33 - Rule 16.32  
File Number: NSD616/2021  
File Title: WESTPAC BANKING CORPORATION ABN 33 007 457 141 & ANOR v FORUM FINANCE PTY LIMITED (IN LIQUIDATION) ACN 153 301 172 & ORS  
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



*Sia Lagos*

Dated: 14/06/2022 10:28:16 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 33  
Rule 16.32

**Defence of the Thirty-Ninth Respondent**

No. NSD616 of 2021

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

**WESTPAC BANKING CORPORATION ABN 33 007 457 141 and Anor**  
Applicants

**MANGUSTA (VIC) PTY LTD**  
Thirty-Ninth Respondent

In response to the Applicants' Second Further Amended Statement of Claim dated 5 November 2021, the Thirty-Ninth Respondent (**Mangusta**) says:

*NB: Unless otherwise stated:*

- A. *terms defined in the Second Further Amended Statement of Claim have the same meaning when used in this Defence;*
- B. *headings and definitions are adopted from the Second Further Amended Statement of Claim for ease of reference and are not treated as part of the pleadings;*
- C. *for the avoidance of doubt, 64-66 Berkeley St does not plead to the headings or definitions employed by the Applicants and in particular does not plead to (and does not admit) headings or definitions which incorporate characterisations of conduct.*

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Filed on behalf of (name & role of party)	Filed on behalf of the Thirty-Ninth Respondent
Prepared by (name of person/lawyer)	Prepared by Sazz Nasimi
Law firm (if applicable)	Madgwicks Lawyers
Tel 03 9242 4744	Fax 03 9424 4777
Email	Sazz.Nasimi@madgwicks.com.au
<b>Address for service</b> (include state and postcode)	Level 6, 140 William Street, MELBOURNE VIC 3000

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**A. PARTIES**

1-34R It admits paragraphs 1 to 34R.

**B. THE EQWE / FORUM PROGRAMME**

35-54 It does not know and therefore does not admit paragraphs 35 to 54.

**C. THE SCHEME**

55-58 It does not know and therefore does not admit paragraphs 55 to 58.

**D. THE FRAUDULENT TRANSACTIONS**

59 - 1830 It does not know and therefore does not admit paragraphs 59 to 1830.

**E. THE DISCOVERY OF THE SCHEME**

1831- 1833 It does not know and therefore does not admit paragraphs 1831 to 1833.

**F-QQ. THE CLAIMS AGAINST THE 1<sup>ST</sup> TO 38<sup>TH</sup> RESPONDENTS**

1834- 2540 It does not know and therefore does not admit paragraphs 1834 to 2540.

**RR. THE CLAIM AGAINST MANGUSTA**

**(1) Funds held on trust**

2541. It does not know and therefore does not admit paragraph 2541.

2542. It does not know and therefore does not admit paragraph 2542.

2543. As to paragraph 2543:

(a) it does not know and therefore does not admit that it received amounts paid pursuant to Transactions 1 to 100 or NZ1 to NZ36;

(b) it denies that it had any knowledge whatsoever that any monies it received were derived from Transactions 1 to 100 or NZ1 to NZ36;

- (c) it says further that, if it did receive such amounts, then half of those amounts (the **Tesoriero Return**) were paid to it by way of a return on a capital investment made in the Forum group of companies by Mr Tesoriero or others on his behalf;

#### **Particulars**

Mr Tesoriero's capital investment in the Forum group of companies included the following payments (at least):

- (i) \$1,000,000 paid on around 4 February 2013;
- (ii) \$200,000 paid on around 4 October 2013;
- (iii) \$60,000 paid on around 4 October 2013;
- (iv) \$1,500,000 paid on around 2 June 2014;
- (v) \$2,000,000 paid on around 2 May 2017.

Further particulars may be provided after discovery.

- (d) in relation to any such funds that it received as part of the Tesoriero Return, it denies that it:
- (i) held those funds, the traceable proceeds of those funds, or any property it converted those funds into, on trust for Westpac;
  - (ii) holds on trust such of those funds or the traceable proceeds of those funds which it holds or of which it has the benefit;
- (e) in relation to any other such funds, it does not know and therefore does not admit that it:
- (i) held those funds, the traceable proceeds of those funds, or any property it converted those funds into, on trust for Westpac;
  - (ii) holds on trust such of those funds or the traceable proceeds of those funds which it holds or of which it has the benefit.

2544. As to paragraph 2544:

- (a) it refers to and repeats paragraphs 2543(a) and (b) above;

- (b) in relation to any such funds that it received as part of the Tesoriero Return, it denies that it:
- (i) holds those funds or the traceable proceeds of those funds on trust for Westpac;
  - (ii) is liable to account to Westpac and/or WNZL for the funds that it has received, or received and paid away, or pay equitable compensation, and refers to and repeats the matters pleaded and particularised in paragraph 2543(c) above;
- (c) it otherwise does not know and therefore does not admit each and every allegation therein.

(2) Tort of unlawful means conspiracy

2545. It does not know and therefore does not admit paragraph 2545.

2546. As to paragraph 2546, it:

- (a) does not know and does not admit each and every allegation therein;
- (b) refers to and repeats the matters pleaded and particularised in paragraph 2548 below.

2547. It does not know and therefore does not admit paragraph 2547.

2548. As to paragraph 2548, it:

- (a) it does not know and therefore does not admit that it received amounts derived from Transactions 1 to 100 or NZ1 to NZ36;
- (b) it denies that it requested payment of any such funds pursuant to the Scheme Agreement or in accordance with the purpose of the Scheme, and refers to and repeats the matters pleaded and particularised in paragraph 2546 above;
- (c) to the extent that it received any such funds as part of the Tesoriero Return, it:
  - (i) refers to and repeats the matters pleaded and particularised in paragraphs 2543(a) to (e) above;

- (ii) denies that any such funds were received pursuant to the Scheme Agreement or in accordance with the purpose of the Scheme, or that it paid any such funds away to benefit conspirators;
- (d) to the extent that it received any other such funds, it does not know and therefore does not admit that payment of such funds was made by FGFS pursuant to the Scheme Agreement or in accordance with the purpose of the Scheme, or that any such funds were paid away to benefit any conspirators;
- (e) it otherwise does not know and therefore does not admit each and every allegation contained therein.

2549. It does not know and therefore does not admit paragraph 2549.

(3) Knowing receipt

2550. It does not know and therefore does not admit paragraph 2550.

2551. As to paragraph 2551, it:

- (a) denies that it knew, ought reasonably to have known, or knew circumstances which would have disclosed to an honest and reasonable person in its position the matters set out in sub-paragraphs (a) and (b);
- (b) denies that it was aware of any of the facts, matters and circumstances set out in sub-paragraphs (c) to (f);
- (c) otherwise does not know and therefore does not admit each and every allegation therein.

2552. It denies paragraph 2552.

**Particulars**

It refers to and repeats the matters pleaded and particularised in paragraph 2548 above.

(4) Knowing assistance

2553. It does not know and therefore does not admit paragraph 2553.

2554. As to paragraph 2554, it:

- (a) refers to and repeats the matters pleaded and particularised in paragraph 2551 above;
- (b) otherwise does not know and therefore does not admit each and every allegation therein.

2555. It denies paragraph 2555.

**Particulars**

It refers to and repeats the matters pleaded and particularised in paragraphs 2553 and 2554 above.

2556. It denies paragraph 2556.

**Particulars**

It refers to and repeats the matters pleaded and particularised in paragraph 2555 above.

2557. It denies paragraph 2557.

(5) *Misleading or deceptive or false or misleading conduct*

2558. As to paragraph 2558, it:

- (a) does not know and therefore does not admit that Forum Finance or Mr Papas engaged in any false and misleading conduct;
- (b) denies that it aided, abetted, procured, was knowingly concerned in or a party to, or conspired with others to give effect to any such contraventions;
- (c) otherwise denies each and every allegation therein.

**Particulars**

It refers to and repeats the matters pleaded and particularised in paragraphs 2545, 2546, 2548, 2551 and 2553 to 2555 above.

**SS-BBB. THE CLAIMS AGAINST THE 40<sup>TH</sup> TO 49<sup>TH</sup> RESPONDENTS**

2560- It does not know and therefore does not admit paragraphs 2560 to 2711.  
2711

Date: 14 June 2022



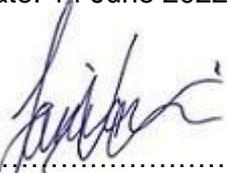
.....  
Signed by Sarwar (Sazz) Nasimi  
Lawyer for the Thirty-Ninth Respondent

This pleading was prepared by Paul Hayes QC and Michael O'Haire.

**Certificate of lawyer**

I, Sarwar (Sazz) Nasimi, certify to the Court that, in relation to the defence filed on behalf of the Eighth Respondent, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: 14 June 2022



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Signed by Sarwar (Sazz) Nasimi  
Lawyer for the Thirty-Ninth Respondent