

NOTICE OF FILING

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Details of Filing

Document Lodged:	Submissions
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: 18/07/2022 6:08:53 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.

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No. NSD of 616/2021

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

Westpac Banking Corporation

ABN 33 007 457 141

Applicant

AND

Forum Finance Pty Ltd

ACN 153 301 172 (In Liquidation)

And Others

Respondents

Supplementary outline of submissions of the Third Respondent for variation of the freezing order and release of funds for legal expenses

(Vincenzo Frank Tesoriero)

I Introduction

1. By order 4 of the Court dated 1 July 2022, the Court ordered that the interlocutory application dated 17 June 2022 (**the Application**) filed by and on behalf of the Third Respondent, Vincenzo Frank Tesoriero (**Mr Tesoriero**) be stood over to 9:30am on 19 July 2022.
2. The Court further ordered that Mr Tesoriero file and serve an affidavit deposing as to his current assets and liabilities position (including his current income and expense position) as of 11 July 2022.
3. The issues to be addressed by the Court when the hearing of the Application resumes are:
 - (a) the allocation of funds currently subject to the freezing order as well as funds in Court and a controlled monies account (**Funds**) for the payment of legal expenses;
 - (b) the extent to which Mr Tesoriero has previously not complied with the orders of the court that he disclose 'to the best of your ability ... all your assets' in and outside of Australia.
4. Mr Tesoriero relies on his affidavits sworn on 21 July 2021, 3 September 2021, 19 October 2021, 8 November 2021, 17 June 2022, 12 July 2022 and 18 July 2022. He also relies on affidavits sworn by his solicitor Mr Sazz Nasimi on 9 November 2021 (at paragraphs 13 to 21), 8 February 2022 and 18 July 2022.

II Allocation of monies towards Mr Tesoriero's legal costs and expenses

5. The circumstances of this Application – especially those in which the hearing of the Application is to resume on 19 July 2022 – well show the vast amplitude of resources available to Westpac to conduct its case against Mr Tesoriero. Mr Tesoriero's current inability to pay his lawyers' and accountant's fees is hampering his preparation for trial. His legal team has not been paid remunerated for the services it has provided to him this year. It would be an understatement to say that his difficulties in properly defending what is a weak case brought against him by Westpac will become acute and unjust without adequate provision to cover the reasonable legal costs of maintaining his defence. The Court should allocate an appropriately generous portion of funds to enable the proper and just conduct of Mr Tesoriero's defence, rather than a parsimonious and insufficient (and relatively disproportionate) grant of funds with the consequence of his defence being unjustly handicapped. While a 'skinny' defence might be cheaper,¹ in the current circumstances it would be at the cost of the proper administration of justice, having regard to the seriousness of the allegations made against Mr Tesoriero and the considerable means available to Westpac to press such allegations against him.
6. Mr Tesoriero's request for the release of monies towards his legal costs and expenses includes a sum of \$370,000 for the costs of retaining an expert to produce expert evidence.² The Court indicated at the hearing on 1 July 2022 that Mr Tesoriero will require leave of the Court to adduce expert evidence.³ For now, Mr Tesoriero does not press for the release of such monies towards the costs involved of leading expert evidence, but will revisit this item prior to trial in the event that he seeks leave of the Court to adduce expert evidence.

III Mr Tesoriero's supposed non-compliance with disclosure orders

7. In the course of discussion at the hearing of the Application on 1 July 2022, the Court indicated that Mr Tesoriero should be ordered to provide "[u]pdated affidavit material ... as to his current asset and liability position" including his "[i]ncome and expense position".⁴

¹ TS (1 July 2022), p 17.22.

² CB 52 [Affidavit of C Murray dated 28 June 2022, exhibit bundle CMM-25 page 1]; CB 588 [Affidavit of S Nasami dated 28 June 2022, exhibit bundle SN-5 page 42].

³ TS (1 July 2022), p 16.18-20.

⁴ TS (1 July 2022), pp 25.31-32, 25.43-44.

8. Mr Tesoriero has now sworn, filed and served seven disclosure affidavits at Westpac's instigation. The most recent of those, sworn on 12 July 2022 and 18 July 2022, are to be understood in that light. Mr Tesoriero has been subjected to repeated requests for specific clarifications of specific queries and specific answers to specific complaints by Westpac. Mr Tesoriero has fully addressed all those requests and complaints. Further, he has responded to them progressively since his initial asset disclosure affidavit of 21 July 2021. The complaints made by Westpac at the hearing of the Application on 1 July 2022 suggest that Westpac is motivated by a neurotic suspicion that Mr Tesoriero has not disclosed all his assets and liabilities as required by the Court's orders,⁵ or alternatively such repeated claims (when viewed against Mr Tesoriero's ongoing disclosure in the matter overall) are at the very least disingenuous and contrary to the overarching purpose and objectives of sections 37M and 37N of the *Federal Court Act 1976* (Cth).
9. It is inappropriate for a party to allege non-compliance with court orders for disclosure on the basis of mere suspicion. That is particularly so where the party – here, Westpac – has professed such suspicions and failed to make them good. It is also inappropriate, given the detailed disclosure made in seven affidavits by Mr Tesoriero, for Westpac to complain that Mr Tesoriero has not disclosed his assets, liabilities, income and expenses. That is particularly so where Westpac has been able to accumulate, consider and understand all the disclosed material progressively over more than one year.
10. The history of specific queries and objections raised by Westpac is set out in the following table.

No.	Date	Source document	Details of Complaint	Date complaint addressed or responded to	Further affidavit addressing complaint	Current status of complaint	3R's submission
1	27 July 2021	Letter from Minters to Fortis Law.	VT did not disclose any interest in the Forum race car team.	10 August 2021, email from Fortis Law to Minters	N/A	Addressed	VT has no interest in any racing car team.
2	27 July 2021	Letter from	VT did not disclose any sponsorship VT receives	10 August 2021, email from Fortis Law to Minters	N/A	Addressed	VT has no interest in any

⁵ TS (1 July 2022), pp 18.5, 18.7, 19.42, 20.9-12.

		Minters to Fortis Law.	for racing the Audi car.				racing car team.
3	27 July 2021	Letter from Minters to Fortis Law.	VT did not disclose Audi race car.	10 August 2021, email from Fortis Law to Minters	N/A	Addressed	VT has no interest in any racing car team.
4	27 July 2021	Letter from Minters to Fortis Law.	VT did not disclose any interest in the café business referred to in para 10A of Annexure A of freezing order.	10 August 2021, email from Fortis Law to Minters	17 June 2022 aff, [62]-[66]	Addressed	Item 31 of Annexure A of the July 201 affidavit disclosed: "Lease at 65 Nelson St Enterprises Trust (operates café business)".
5	27 July 2021	Letter from Minters to Fortis Law.	VT's property valuations do not account for value of any construction or improvements by VT or an associated entity since acquisition.	10 August 2021 email from Fortis Law to Minters: improvements captured by estimate of property value.	N/A	Addressed	Valuations presumably included buildings and improvements.
6	9 August 2021	Letter from Minters to Fortis Law.	VT did not disclose shares in Thrivi Group Pty Ltd	- In part: Fortis email 10 August 2021 - Formal disclosure 8 November 2021.	8 November 2021 aff.[10](a)	Addressed	The entity was deregistered on 11 July 2021 prior to disclosure of assets in 21 July 2021 affidavit.
7	9 August 2021	Letter from Minters to Fortis Law.	VT did not disclose indirect interest in Ifish Finance Pty Ltd	- In part: Fortis email 10 August 2021 - Formal disclosure 8 November 2021.	8 November 2021 aff. [10](b)	Addressed	- Shares are held by Forum Group Financial Services Pty Ltd, not VT directly. - VT had disclosed his interest in Forum Group Financial Services Pty Ltd, so should not infer that VT was trying to hide

							valuable assets.
8	9 August 2021	Letter from Minters to Fortis Law.	VT did not disclose indirect interest in Intrashield Financial Services Pty Ltd	- In part: Fortis email 10 August 2021 - Formal disclosure 8 November 2021.	8 November 2021 aff. [10](c)	Addressed	- Shares held by Tesoriero Investment Group Pty Ltd and Vintes No 4 Pty Ltd, not directly by VT. - VT had already disclosed his shareholdings in Tesoriero Investment Group Pty Ltd and Vintes No 4 Pty Ltd, so should not infer that VT was trying to hide valuable assets.
9	9 August 2021	Letter from Minters to Fortis Law.	VT did not disclose indirect interest in the Forum Group of Companies Pty Ltd	10 August 2021	8 November 2021 aff. [10](d)	Addressed	- Shares held by Tesoriero Investments Group Pty Ltd, not directly by VT. - VT had already disclosed his shareholding in Tesoriero Investment Group Pty Ltd, so should not infer that he was trying to hide valuable assets.
10	9 August 2021	Letter from Minters to Fortis Law.	VT did not disclose indirect interest in Forum Finance Ltd	10 August 2021	8 November 2021 aff. [10](e)	Addressed	- Shares held by The Forum Group of Companies Pty Ltd, not directly by VT. - VT had already disclosed shareholding in The Forum Group of Companies Pty Ltd, so should not infer that he

							was trying to hide valuable assets.
11	9 August 2021	Letter from Minters to Fortis Law.	VT did not disclose indirect interest in Pankarm Pty Ltd		8 November 2021 aff. [10](f)	Addressed	- VT has no recollection of ever being involved in such entity. - Holds no interest in it. Denies that 'VT' on ASIC search is the 3 rd respondent.
12	9 August 2021	Letter from Minters to Fortis Law.	VT did not disclose interest in the Mangusta Trust and the XOXO yacht.	- 10 August 2021 (Fortis ltr to Minters) - 13 August 2021 (email to Minters) - Sept. affidavit Appendix A paragraphs 1.5-1.7.	17 June 2022 aff, [39]-[40].	Addressed	VT disclosed in September 2021 affidavit once freezing order varied to require disclosure of foreign assets. VT did not disclose in July since advised that, as a foreign asset, it was "not captured by the orders".
13	9 August 2021	Letter from Minters to Fortis Law.	VT values shares in Mangusta (Vic) Pty Ltd – the registered owner of the XOXO yacht – at nil.	3 September 2021	3 September 2021 affidavit – Annexure A.	Addressed in September affidavit.	An estimated value of the yacht was afterwards provided.
14	12 August 2021	Letter from Minters to Fortis Law.	VT did not disclose 2007 Toyota Yaris reg UQM112	13 August 2021 16 August 2021	12 July 2022 aff. [53]	Addressed	Belongs to Teresa Tesoriero
15	12 August 2021	Letter from Minters to Fortis Law.	VT did not disclose 2019 BRP Can-Am Ryker 600 register RYKER	13 August 2021	12 July 2022 aff. [53]	Addressed	Oversight: had not used for a very long time, and had been stored at a friend's farm for a long time.

16	12 August 2021	Letter from Minters to Fortis Law.	VT did not disclose 2001 Ducati 996 S	16 August 2021	12 July 2022 aff. [53]	Addressed	Belongs to Giovanni Tesoriero
17	12 August 2021	Letter from Minters to Fortis Law.	VT did not disclose 1978 Ducati Desmo 900 SS	13 August 2021 16 August 2021	12 July 2022 aff. [53]	Addressed	Belongs to Giovanni Tesoriero
18	12 August 2021	Letter from Minters to Fortis Law.	VT did not disclose 1990 Aprilia RS250	13 August 2021 16 August 2021	12 July 2022 aff. [53]	Addressed	Belongs to Giovanni Tesoriero
19	19 August 2021	Letter from Minters to Fortis Law.	Westpac "surprised" that VT did not disclose purchase contract – re 8-12 Natalia Avenue, Oakleigh South – in July affidavit.	17 August 2021	12 July 2022 aff. [41]-[44]	Addressed	VT disclosed this voluntarily, without request by Minters-Westpac. VT offered to consent to pay nomination fee into court or a joint account held by Fortis & Minters.
20	2 June 2022	Letter from Minters to Madgwicks – CB 72	VT has not provided evidence that lacks access to other funds for legal expenses	12 July 2022	12 July 2022 aff. annexures	Addressed as far as VT has been able to.	The 12 and 18 July 2022 affids update VT's disclosure of income and outgoings, and such information as to bank accounts as he has access to. Westpac have subpoenaed VT's banks.
21	2 June 2022	Letter from Minters to Madgwicks	VT has not explained the status of his various bank accounts	12 July 2022	12 July 2022 aff. annexures	Addressed as far as VT has been able to.	The 12 and 18 July 2022 affids update VT's disclosure of income and outgoings, and such information as to bank accounts as he has access to.

							Westpac have subpoenaed VT's banks.
22	24 June 2022	Letter from Minters to Madgwicks – CB 120	VT has not provided evidence that lacks access to other funds for legal expenses	12 July 2022	12 July 2022 aff. annexures	Addressed as far as VT has been able to.	The 612 July affidavit updates VT's disclosure of income and outgoings, and such information as to bank accounts as he has access to. Westpac have subpoenaed VT's banks.
23	24 June 2022	Letter from Minters to Madgwicks – CB 121	VT did not disclose why interest expenses rose by approx. \$36,200 since July affidavit and 17 June 2022 affidavit.	12 July 2022	12 July 2022 aff. Annex. B	Addressed	The amounts of principal owing a large; variable interest rates are applicable; and those interest rates have risen.
24	24 June 2022	Letter from Minters to Madgwicks – CB 121	VT has not included statements of account to substantiate the interest expenses in July affidavit par [37].		18 July 2022 aff. of S Nasimi, [19]	Addressed as far as VT has been able to	
25	24 June 2022	Letter from Minters to Madgwicks – CB 121	VT did not disclose why rents fell by approx. \$14,000 in rents between July affidavit and 17 June 2022 affidavit.	12 July 2022	12 July 2022 aff. [12], [13]-[5], [22]-[23], [28]-[31], Annex. B	Addressed	The factors affecting the net rents from month to month are fully explained in the 6 th affidavit. In particular, some rent-producing properties were sold and rent was mistakenly included for the High Street, Rushworth property (see

							item 27 below).
26	24 June 2022	Letter from Minters to Madgwicks – CB 121	VT has not included statements of account to substantiate the rent income in the July affidavit par [37].	12 July 2022 aff. VFT-6	12 July 2022 aff. VFT-6	Addressed	Now has provided Buxton (Oakleigh) statements for period July 2021 to June 2022
27	24 June 2022	Letter from Minters to Madgwicks – CB 121	VT does not explain why he disclosed “22 Hight St, Rushworth 3612” as an asset of 22 High Street Rushworth Pty Ltd. Title search shows registered proprietor is Rushworth Property Holdings Pty Ltd.	12 July 2022	12 July 2022 aff. [33]-[38], VFT-6	Addressed	VT disclosed that asset since he anticipated that a contract on foot to acquire the property would proceed to settlement. Settlement did not eventuate. Hence the disclosure was excessive.
28	1 July 2022	Mr Giles SC: TS p 18 lines 5-8	Kirwin account “curiously” receives most of the rent earned by Tesoriero entities.	12 July 2022	12 July 2022 aff. [10]-[12], [16]-[21]	Addressed	There is no curiosity. The account now functions as a <i>single</i> destination for all net rents, whereas in July 2021 the rents were received in <i>multiple</i> accounts.

11. The way in which Mr Tesoriero has addressed each of Westpac’s many specific and in some instances needlessly pedantic complaints to date, reveals the fragile basis upon which Westpac contends that it *suspects* Mr Tesoriero *may* not presently be compliant with the disclosure orders directed towards him.
12. To entertain any objection from Westpac merely as to the *form* of Mr Tesoroero’s disclosure is a waste of the Court’s time: Westpac has progressively received earnest responses afforded in good faith to its many specific complaints. Westpac is well aware of the complaints it has made in the past, and the responses it has

received. The disclosure required of Mr Tesoriero pursuant to the Court's order of 1 July 2022 has in substance been provided (and subsequently explained and elaborated upon in response to Westpac's requests). Any suggestion from Westpac to the contrary, especially from here on, should be viewed as disingenuous and contrary to the overarching objective.

13. Mr Tesoriero has now provided discovery in the proceeding. An affidavit of documents was filed on 14 July 2022.
14. Regarding the subpoenas and notices to produce addressed to him, Mr Tesoriero has produced such documents as he has been able to produce and explained to Westpac that at present he is unable to provide further documents since he lacks immediate access to them.

IV Conclusion

15. The Court should make the orders proposed by Mr Tesoriero to be made on this Application, including in particular an order (proposed order 1) that order 4 of the orders made by Justice Lee on 2 July 2021 (as varied on 9 July 2021, 27 August 2021 and 12 November 2021) be varied so that sub-paragraph 10(b) reads: "paying up to the sum of \$1,496,000 on your reasonable legal expenses".⁶

Dated: 18 July 2022

P J HAYES

P G TURNER

Counsel for the Third Respondent

⁶ The amount of \$1,496,000 is reached after deducting the amount of \$370,000 (estimate expert witness costs) from the sum of \$1,866,000 claimed by the Third Respondent for the costs of defending the claim against him up until and including the trial.