

NOTICE OF FILING

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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: 20/04/2022 3:28:08 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.

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 Nineteenth 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

31 ELLERMAN STREET DIMBOOLA PTY LTD (ACN 641 392 887)
Nineteenth Respondent

In response to the Applicants' Second Further Amended Statement of Claim dated 5 November 2021, the Nineteenth Respondent (**31 Ellerman St**) 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, 31 Ellerman 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.*

| | |
|--|---|
| Filed on behalf of (name & role of party) | Filed on behalf of the Nineteenth Respondent |
| Prepared by (name of person/lawyer) | Prepared by Alexandra Lawrence |
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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-W. THE CLAIMS AGAINST THE 1ST TO 18TH RESPONDENTS

1834-2185 It does not know and therefore does not admit paragraphs 1834 to 2185.

X. THE CLAIM AGAINST 31 ELLERMAN ST**(1) Funds held on trust**

2186. It does not know and therefore does not admit paragraph 2186.

2187. It does not know and therefore does not admit paragraph 2187.

2188. As to paragraph 2188:

- (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) in relation to any such funds, 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;
- (d) 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) \$2,109,755 paid on around 1 May 2017;
- (vi) \$2,000,000 paid on around 2 May 2017.

Further particulars may be provided after discovery.

2189. As to paragraph 2189:

Particulars

It refers to and repeats paragraphs 2188 above.

(2) *Tort of unlawful means conspiracy*

2190. It does not know and therefore does not admit paragraph 2190.

2191. As to paragraph 2191, it:

- (a) does not know and therefore does not admit each and every allegation therein;
- (b) refers to and repeats the matters pleaded and particularised in paragraph 2193 below.

2192. It does not know and therefore does not admit paragraph 2192.

2193. As to paragraph 2193:

- (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 2191 above;
- (c) to the extent that it received any such funds, it:
 - (i) refers to and repeats the matters pleaded and particularised in paragraphs 2188 (a) to (d) 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) it otherwise denies each and every allegation contained therein.

2194. It does not know and therefore does not admit paragraph 2194.

(3) *Knowing receipt*

2195. It does not know and therefore does not admit paragraph 2195.

2196. As to paragraph 2196, 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.

2197. It denies paragraph 2197.

Particulars

It refers to and repeats the matters pleaded and particularised in paragraph 2193 above.

(4) *Knowing assistance*

2198. It does not know and therefore does not admit paragraph 2198.

2199. As to paragraph 2199, it:

- (a) refers to and repeats the matters pleaded and particularised in paragraph 2196 above;
- (b) otherwise does not know and therefore does not admit each and every allegation therein.

2200. It denies paragraph 2200.

Particulars

It refers to and repeats the matters pleaded and particularised in paragraphs 2198 and 2199 above.

2201. It denies paragraph 2201.

Particulars

It refers to and repeats the matters pleaded and particularised in paragraph 2200 above.

2202. It denies paragraph 2184.

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

2203. As to paragraph 2203, 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 2190, 2191, 2193, 2196 and 2198 to 2200 above.

Y-BBB. THE CLAIMS AGAINST THE 20TH TO 49TH RESPONDENTS

2204- It does not know and therefore does not admit paragraphs 2204 to 2711.
2711

Date: 20 April 2022



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Signed by Sarwar (Sazz) Nasimi
Lawyer for the Nineteenth 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 Nineteenth Respondent, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: 20 April 2022



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Signed by Sarwar (Sazz) Nasimi
Lawyer for the Nineteenth Respondent