

**SMBC Leasing and Finance, Inc. v Forum Enviro (Aust) Pty Ltd (in liq) & Others**

**Applicant's closing submissions**

1. These submissions should be read in conjunction with SMBC's Opening Submissions<sup>1</sup> and Supplementary Submissions.<sup>2</sup> Defined terms used in those submissions are adopted here.
2. SMBC's Opening Submissions explain (with supporting evidential references):
  - (a) The contractual arrangements between SMBC, Flexirent and FEA under the 2018 and 2020 MRASA (paras [19]-[26]);
  - (b) The payments made by SMBC, either via Flexirent to FE (purportedly pursuant to the 2018 MRASA) or directly to FEA (purportedly pursuant to the 2020 MRASA) (paras [27]-[31]);
  - (c) The basis for finding that those payments were obtained by fraud, in that they were procured by the provision of transaction documents – in particular, purported equipment leases – on which the signatures of officers of the purported customer, Veolia, were forged; and in circumstances where the equipment purportedly the subject of those leases did not exist (paras [32]-[54]);
  - (d) The basis for imputing knowledge of the fraud to Mr Papas and the Papas Related Entities (paras [48]-[50], [55]-[56], [72]-[75]);
  - (e) The process undertaken by the Liquidators to identify the extent to which funds traceable to the payments made by SMBC have been received by each of the respondents (paras [58]-[63]);

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<sup>1</sup> MIN.5000.0019.0017.

<sup>2</sup> MIN.5000.0019.0063.

- (f) The causes of action available to SMBC against each respondent or set of respondents in light of the fraud (paras [79]-[145]).
3. It is not proposed to revisit the matters outlined in SMBC's Opening Submissions or to supplement the evidential references there set out. These closing submissions address a number of discrete matters principally relevant to relief.
- A. The structure of the relief claimed**
4. The relief sought by SMBC comprises a proprietary element and a personal element. It is necessary to say something about each.

***Proprietary relief***

5. Where SMBC's funds have been received by a particular respondent, SMBC claims a trust over those funds or their traceable proceeds in the hands of that respondent.<sup>3</sup> The trust arises pursuant to the principles in *Black v Freedman*: see Westpac's Opening Submissions at [117].
6. In light of the evidence served by the Liquidators, it is possible to identify cash balances currently held on behalf of each respondent over which proprietary relief can be granted. Annexure A to these submissions shows: (a) the total amount of financier funding received by or on behalf of each respondent; (b) the amount of SMBC funds comprised in that amount; (c) (where known) the cash balance now retained by the relevant respondent; and (d) the amount of any retained cash balance that should be subject to a trust in favour of SMBC. With one exception, the amounts in (d) are capped at the amount of SMBC funds received by the relevant respondent. The exception is 6 Bulkara, whose assets increased in value as a result of the receipt of financier funds (by reason of the profitable sale of land acquired with those funds); in accordance with the principles stated in *Foskett v McKeown* [2001] 1 AC 102 at 130-131, SMBC claims a proportionate share of that increase in value. More generally, it should be noted that, where a respondent held land and the land has been sold and a surplus remains from the proceeds of sale, the amounts in (d) include the surplus proceeds. The basis for any

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<sup>3</sup> SMBC's Second Further Amended Originating Application, Prayers 3A, 5, 15A, 17, 24, 30, 36, 42, 48, 54, 60, 66, 72, 78, 84, 90, 96, 102, 108, 114, 120, 126, 132, 135, 138, 141, 144, 150 (MIN.5000.0024.0016).

proprietary relief extending over those proceeds is explained below at paragraphs 23 to 26 below.

7. Accordingly, the proprietary relief proposed by SMBC for each respondent includes both:
  - (a) a declaration of trust over the funds of SMBC that the respondent has received, or their traceable proceeds; and
  - (b) where the Liquidators have identified a cash balance held by a respondent, a specific declaration of trust over that cash balance, not exceeding the amount of SMBC funds received by that respondent.

The first form of declaration has utility, even where specific cash balances have been identified, because it is possible that additional traceable proceeds will be identified in the future (e.g. if the Liquidators realise other assets or make fresh recoveries).

8. Given the likelihood of competing proprietary claims by Westpac and Societe Generale, in the case of some respondents there will be insufficient amounts left to meet all such claims in full. However, given that the Liquidators' tracing analysis identifies the respective proportions of financier funding each respondent received, the Liquidators will be in a position to distribute the remaining funds rateably among the respective financiers.

### ***Personal relief***

9. In addition to proprietary relief, SMBC seeks personal relief against each respondent in the form of judgment in a specific sum. This is necessary where not all proprietary claims can be met in full; and where most respondents no longer retain the entirety of the SMBC funds they received. The quantum of personal relief sought is shown in the last column of Annexure A. Plainly, the practical utility of such relief will turn on the prospects of any particular entity achieving recoveries which are available to all creditors.

### ***Liability for the sums received***

10. In the case of most respondents, the judgment sum is limited to the amount of SMBC funds received by or on behalf of the respondent, as shown in the second column of Annexure A. That relief gives effect to the liability to account to which the recipient

of property the subject of a *Black v Freedman* trust becomes subject, upon becoming aware (actually or constructively) that they have received stolen funds: see Westpac's Opening Submissions at [119]. As explained in SMBC's Opening Submissions, that knowledge can be attributed to the Papas Related Entities based on Mr Papas' knowledge of the fraud (paras [72]-[75]); and may be attributed to the Tesoriero Related Entities if the Court finds that Mr Tesoriero had knowledge of the fraud throughout (para [142]).

11. Even if the Court were not to find that Mr Tesoriero had knowledge of the fraud, a personal remedy for the amount received by the Tesoriero Related Entities is available under the action for money had and received: SMBC's Opening Submissions [82]-[85]. That claim is not confined to the sum remaining in a recipient's hands, but extends to the entirety of the amount received, subject to a change of position defence which the respondent has the onus of establishing: *Lipkin Gorman v Karpnale Ltd* [1991] 2 AC 548 at 572; *Chong v Chanell* [2009] NSWSC 765 at [32]-[34] (Brereton J). No such defence has been raised here.
12. In the case of 6 Bulkara, which has made a profit from the receipt of SMBC's funds, the liability to account is calculated by reference to that profit.

*Liability for the entirety of SMBC's loss*

13. In the case of seven respondents (Mr Papas, FGFS, FEA, FE, FG, Iugis and FGOC<sup>4</sup>), the quantum of personal relief extends to the entirety of the loss suffered by SMBC as a consequence of Mr Papas' fraudulent scheme. That loss is \$83,993,909.47.<sup>5</sup>
14. The basis for claiming the entirety of that loss against Mr Papas, FGFS, FE, FG, Iugis and FGOC is knowing assistance: see SMBC's Opening Submissions at [104]-[105]. That claim is made against Mr Papas on the basis that he caused the fraudulent payments to be made (SMBC's Opening Submissions at [125]-[127]). The claim is made against FGFS, FE, FG and Iugis on the basis that their bank accounts were used as conduits for the movement of SMBC's funds from the accounts into which they were initially paid to the various respondents who received the benefit of the payments shown

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<sup>4</sup> The Forum Group of Companies Pty Ltd had been abbreviated as TFGC in SMBC's Opening Submissions, but in these submissions the abbreviation FGOC has been adopted as it is the abbreviation used by Westpac in its submissions and in cross-examination.

<sup>5</sup> A breakdown showing how that figure is arrived at is contained in SMBC's Opening Submissions at [111] (MIN.5000.0019.0017).

in Annexure A,<sup>6</sup> and in that way they enabled the fraudulent scheme to operate. The claim is made against FGOC on the basis that it was the parent company of FEA, FE, FG and Iugis, and it produced the audited consolidated financial reports for the Forum Group<sup>7</sup> (but not for FGFS), which provided a veneer of financial legitimacy for the scheme to operate.

15. The position of FEA is different. No knowing assistance claim is made against it, as it is treated as the principal which fraudulently procured the payment of funds from SMBC, being the entity that contracted with Flexirent in 2018 and with SMBC in 2020. The loss of \$83,993,909.47 is claimable from it on the grounds of unlawful means conspiracy or, alternatively, deceit: SMBC's Opening Submissions at [110]-[113].

### ***Cumulative remedies***

16. There is no inconsistency between the grant of personal and proprietary relief such that SMBC would be required to elect between the two.
17. The principles governing election between remedies were outlined by the Privy Council in *Tang Man Sit v Capacious Investments Ltd* [1996] 1 AC 514 at 520-522.<sup>8</sup> In short, where remedies are alternative and inconsistent (such as damages and account of profits), the plaintiff must elect between them. Where remedies are cumulative, the plaintiff can obtain and enforce judgment for both, subject to the principle against double recovery i.e. it cannot recoup more than its loss.
18. Personal and proprietary relief against a defaulting trustee fall into the latter category. Thus, in *Director of Serious Fraud Office v Lexi Holdings plc* [2009] QB 376; [2008] EWCA Crim 1443 at [39]-[40], the English Court of Appeal explained that a trustee's personal obligation to account is not inconsistent with a claim to an equitable charge against the traceable proceeds of misappropriated assets. The charge is a cumulative remedy in aid of the equitable in personam claim, not an alternative remedy. In *PSAL Pty Ltd v Raja* [2016] WASC 295 at [101] and [104], Pritchard J regarded a proprietary

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<sup>6</sup> The use of the bank accounts of FGFS, FG and Iugis in this way is shown in the Liquidator's tracing model at Exhibit JP-17, see tabs Trace – FGFS, Trace – FG and Trace – Iugis (Exhibit JP-17 – Alternative Tracing Model (520489108.1)).

<sup>7</sup> The Forum Group of Companies Pty Limited and Controlled Entities Financial Statements: for the year ended 30 June 2017 (FOG.1000.0010.4618); for the year ended 30 June 2018 (FOG.1000.0002.7083); for the year ended 30 June 2019 (FOG.1000.0004.4752); for the year ended 30 June 2020 (FOG.1000.0003.1325).

<sup>8</sup> Followed in Australia in *Baxter v Obacelo Pty Ltd* (2001) 205 CLR 635 at [39] and *GM and AM Pearce & Co Pty Ltd v Australian Tallow Products* [2005] VSCA 113 at [56].

claim to the proceeds of sale of land as not inconsistent with an award of damages such that the plaintiff had to elect between them. Her Honour explained that the proprietary claim is an exercise in tracing property to which the plaintiff was entitled as equitable owner, whereas the damages claim compensated her for damage she had suffered.<sup>9</sup>

19. It follows that personal and proprietary relief may be awarded against the one respondent, albeit SMBC cannot recover twice from any one respondent.

### ***Landholding entities***

20. As indicated above, a particular issue arises in relation to certain landholding entities whose land has been sold and an amount realised. The landholding entities comprise: 26 Edmonstone Rd; 23 Margaret St; FGFS; 5 Bulkara; 6 Bulkara and 64-66 Berkeley.<sup>10</sup> In some cases, the land was acquired before the receipt of the financiers' traceable funds;<sup>11</sup> in others, the financiers' traceable funds were used to pay some (but not all) of the purchase price.<sup>12</sup>
21. The landholding entities (other than FGFS) were each special purpose vehicles formed by either or both of Mr Papas and Mr Tesoriero to develop a particular site.<sup>13</sup> Mr Bouchahine kept detailed spreadsheets showing invoices received for expenses pertinent to each site.<sup>14</sup> They include invoices for the payment of consultants and tradespeople in relation to property projects e.g. architects, plumbers, engineers, landscapers, designers, surveyors and marketers.<sup>15</sup> The spreadsheets also show recurring payments in the nature of interest, or principal and interest, payable on loans

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<sup>9</sup> A further application of these principles is *Grimaldi v Chameleon Mining (No 2)* (2012) 200 FCR 296 at [641], where the Full Court considered that an order for an account of profits under s 1317H of the *Corporations Act* 2001 (Cth) and an equitable liability to account for profits obtained in breach of fiduciary duty were cumulative remedies. Although the profits recoverable in each claim might considerably or wholly overlap, the claims had independent areas of operation (based on different principles of attribution and causation). To the extent each would sweep up the profits which would also be caught by the others, they could not be enforced so as to produce double recovery.

<sup>10</sup> The amounts realised in respect of each property are shown in WBC s 50 summary tab 3 (MIN.5000.0005.0439).

<sup>11</sup> This was the case for 26 Edmonstone Rd and 23 Margaret St: see WBC s 50 summary tab 3, lines 2 and 3 (MIN.5000.0005.0439).

<sup>12</sup> This was the case for 5 Bulkara (WBC s 50 summary tab 11, lines 2 and 4 (MIN.5000.0005.0130)); 6 Bulkara (WBC s 50 summary tab 12, line 5 (MIN.5000.0005.0139)); and 64-66 Berkeley (WBC s 50 summary tab 22, lines 1, 2, 6 (MIN.5000.0005.0142)). It also appears to be the case for FGFS (WBC s 50 summary tab 37, line 1 (MIN.5000.0005.0068)).

<sup>13</sup> Bouchahine at [32], [33] (MIN.5000.0038.0001 at .0010). Mr Tesoriero gave evidence to the same effect: Tr 344.10-13; 357.30-32; 359.13-16.

<sup>14</sup> The spreadsheets are itemised at Annexure D to Westpac's Opening Submissions.

<sup>15</sup> Tr 496.15-16. See also, by way of example, the expenses recorded in the "Outstanding" tab in the spreadsheet that is FOG.1000.0001.3403.

taken out to acquire those sites,<sup>16</sup> the loans being secured by mortgages over the site itself.<sup>17</sup> While on some occasions FGFS made these payments directly, on others they were paid from the relevant entity's own bank account and FGFS would transfer sums of money to those accounts so they would be available for this purpose.<sup>18</sup>

22. SMBC is entitled to trace into the proceeds of sale so much of its funds as were received by each of the landholding entities, for the following reasons.
23. First, to the extent that SMBC's funds were used to pay part of the purchase price for the property, it is entitled to trace those funds into the property itself: *Foskett v McKeown* [2001] 1 AC 102 at 131.
24. Secondly, to the extent its funds were expended on meeting instalments due under the various mortgages, tracing into the land is possible because the payer is subrogated to the rights of the mortgagee when the loan is ultimately discharged (as it was here when the properties were sold): *Russell Gould Pty Ltd v Ramangkura* (2014) 87 NSWLR 552; [2014] NSWCA 310 at [37]; *Heperu Pty Ltd v Belle* (2009) 76 NSWLR 230; [2009] NSWCA 252 at [135].
25. Thirdly, to the extent that SMBC's funds were paid to advance the development of the properties, the land will be charged to secure repayment of those sums: *Cook v Italiano Family Fruit Company Pty Ltd* (2010) 190 FCR 474 at [91] (Finkelstein J); *Alesco Corporation Ltd v Te Maari* [2015] NSWSC 469 at [164], [167] (Hallen J).<sup>19</sup>
26. Fourthly, to the extent that gaps remain and there is a possibility that SMBC's funds were applied to purposes other than those just outlined, it is necessary to bear in mind the robust approach taken to tracing moneys from theft and the presumptions against a

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<sup>16</sup> E.g. FOG.1000.0001.3403 (refer to the "Recurring" tab). Mr Tesoriero confirmed that these payments related to interest payable to lenders: Tr 496.28-37. In respect of FGFS, which owned 2-4 Atherton Rd, the mortgage repayments are detailed in WBC s 50 summary tab 37 (MIN.5000.0005.0068).

<sup>17</sup> The mortgages in respect of each site are shown in WBC s 50 summary tab 3 (MIN.5000.0005.0439). Mr Tesoriero also gave evidence about the loans being secured against the sites: e.g. Tr 504.13-15.

<sup>18</sup> This was the evidence of Mr Tesoriero: Tr 366.6-12; 457.15-23; 475.1-3. It was confirmed by Mr Bouchahine: Tr 579.25-31. It is supported by the Liquidator's tracing model at Exhibit JP-17 (Exhibit JP-17 – Alternative Tracing Model (520489108.1)). This shows, for instance, (i) lump sum payments made from FGFS to 26 Edmonstone Rd; and (ii) payments made from the account of 26 Edmonstone Rd to pay particular invoices shown on Mr Bouchahine's spreadsheets (see the Tab entitled "Trace – 26 Edmonstone").

<sup>19</sup> Other cases where similar relief has been awarded include: *Leighton Contractors Pty Ltd v O'Carrigan* [2016] QSC 223 at [164]; *Presbyterian Church of Victoria Trusts Corporation v Anstee (No 2)* [2017] VSC 102 at [57], [63].

wrongdoer identified in Westpac's Opening Submissions at [124]-[125]. In *Heperu* at [116] the Court of Appeal recognised that a trustee whose own record-keeping has prevented proper accounts being kept cannot be heard to contend that the beneficiary's money has been dissipated as opposed to being preserved in profitable withdrawals. In *Sze Tu v Lowe* (2014) 89 NSWLR 317; [2014] NSWCA 462 at [457]-[460], the Court of Appeal indicated that similar principles apply to the volunteer recipient of stolen moneys who derives their title from the wrongdoer, since the volunteer can be in no better position than the wrongdoer. In the absence of evidence to the contrary, the Court is justified in regarding the sale proceeds as representing the traceable proceeds of SMBC's funds.

27. The position is slightly different in the case of 64-66 Berkeley, since the property owned by it has not been sold and there are no proceeds to which a trust may attach. In those circumstances, the appropriate remedy is to charge the land with repayment of the funds of SMBC received by the company: cf *Alesco Corporation Ltd v Te Maari* [2015] NSWSC 469 at [164], [167], where similar relief was ordered in a case where trust money was used to improve land. Any such charge is an equitable charge and would be subordinate to the interest of the existing registered mortgage over the property.

## **B. Defences**

28. Only three of the entities sued by SMBC have filed defences: 23 Margaret St; 64-66 Berkeley St and 286 Carlisle St. The Liquidators have reserved their position as to reliance on those defences.
29. The defences have not been substantiated.
30. 23 Margaret St and 64-66 Berkeley St plead that, to the extent they received SMBC's funds, they were received by way of return of capital investment made in the Forum Group by Mr Tesoriero or others on his behalf.<sup>20</sup> In fact, there is no evidence of any payment of SMBC's funds being made to 23 Margaret or 64-66 Berkeley by way of return of capital. It is difficult to understand how such a payment could be made where neither company invested in the Forum Group. Mr Tesoriero's evidence was that Tesoriero Investment Group Pty Ltd was the entity he formed to acquire shares in

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<sup>20</sup> 23 Margaret St Defence, [525(d)] (MIN.5000.0024.0016A); 64-66 Berkeley St Defence, [535(d)] (MIN.5000.0024.0027).



FGOC.<sup>21</sup> Further, there is no evidence FGOC declared a dividend in the period 2018-2021<sup>22</sup> or otherwise resolved to make any return of capital to its shareholders (who were not confined to TIG<sup>23</sup>). In short, there is no evidence of TIG being legally entitled to any payment from FGOC or any company in the Forum Group and no evidence that it directed that any such entitlement should be satisfied by the making of a payment to 23 Margaret St or 64-66 Berkeley St.

31. 23 Margaret St also pleads that, to the extent it received SMBC's funds, they were received by way of rental income paid by or on behalf of Mr Papas.<sup>24</sup> However, although some payments received by 23 Margaret St are described as "rent" on FGFS's bank statements,<sup>25</sup> there is no evidence that FGFS was under any legal obligation to 23 Margaret St to make those payments. Nor is there any evidence that the monthly amounts paid were amounts that Mr Papas himself was liable to pay. No rental agreement has been adduced into evidence.
32. 286 Carlisle St pleads that payments made through its bank account were made in circumstances where it did not open that account and payments made through it were made without its knowledge or authority.<sup>26</sup> That defence is untenable where Mr Tesoriero (the company's director and sole shareholder) was expressly told by the NAB about the opening of the account and signed an authority to permit him to be the signatory;<sup>27</sup> where had had been sent a statement on the account by Mr Bouchahine,<sup>28</sup> and where Mr Bouchahine provided Mr Tesoriero with details of the overseas bank account that 286 Carlisle St paid money into.<sup>29</sup> Ultimately, Mr Tesoriero accepted that he knew as at June 2021 that 286 Carlisle St was paying money into an account in Greece.<sup>30</sup>

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<sup>21</sup> Mr Tesoriero's evidence was that this was the entity he formed to acquire shares in FGOC: Tr 398.13-21.

<sup>22</sup> Its annual accounts positively show that it did not: FOG.1000.0004.4752 at .4757 (FY2019); FOG.1000.0003.1325 at .1327 (FY2020).

<sup>23</sup> WBC s 50 summary tab 2, line 5 (MIN.5000.0006.1747).

<sup>24</sup> 23 Margaret St Defence, [525(d)] (MIN.5000.0024.0016A).

<sup>25</sup> \$13,566 per month. See WBC Section 50 summary tab 18 (MIN.5000.0005.0099).

<sup>26</sup> 286 Carlisle St Defence, [530] (MIN.5000.0024.0022).

<sup>27</sup> FOG.1001.0002.5081. Mr Tesoriero also gave evidence that "Mr Papas asked me to open it, or Mr Papas asked Mr Bouchahine to open the account": Tr 534.7-10.

<sup>28</sup> FOG.1000.0004.7234.

<sup>29</sup> FOG.1000.0002.8366

<sup>30</sup> Tr 537.16-25.

### C. Payments by SMBC to Flexirent

33. One final matter should be addressed. It was pointed out in SMBC’s oral opening that the payments made by SMBC to Flexirent do not correspond precisely to the payments made by Flexirent to FE.<sup>31</sup>
34. The relevant payments are set out in SMBC’s s 50 Summary entitled “Summary of Payments from SMBC Leasing and Finance Inc to Forum Enviro Pty Ltd via Flexirent Capital Pty Ltd”.<sup>32</sup> While the total sums largely correspond (a total of \$29,709,714.14 is paid by SMBC to Flexirent, while a total of \$29,737,241.50 is paid by Flexirent to FE), the correspondence is not exact, and in fact the first two payments by Flexirent to FE are made before any payments are received by it from SMBC.
35. This disconformity does not prevent SMBC tracing its funds into the amounts ultimately paid by Flexirent to FE. In *Federal Republic of Brazil v Durant International Corporation* [2016] AC 297, the Privy Council emphasised at [38] that the availability of equitable remedies ought to depend on the substance of a transaction and not on the strict order in which associated events occur. It stated at [40] that what is required is a co-ordination between the depletion of a trust fund and the acquisition of an asset which is the subject of a tracing claim, looking at the whole transaction, such as to warrant the court attributing the value of the interest acquired to the misuse of the fund. The decision has been followed in Australia: *Leighton Contractors Pty Ltd v O’Carrigan* [2016] QSC 223 at [106]-[107] (Boddice J).
36. A similar point had earlier been made by Arden LJ in *Relfo Investments Ltd v Varsani* [2014] EWCA Civ 360 at [63] (Gloster and Floyd LJJ agreeing):
- monies held on trust can be traced into other assets even if those other assets are passed on before the trust monies are paid to the person transferring them, provided that that person acted on the basis that he would receive reimbursement for the monies he transferred out of the trust funds. The decision in *Agip* demonstrates that in order to trace money into substitutes it is not necessary that the payments should occur in any particular order, let alone chronological order. As Mr Shaw submits, a person may agree to provide a substitute for a sum of money even before he receives that sum of money. In those circumstances the receipt would postdate the provision of the substitute. What the court has to do is establish whether the likelihood is that monies could have been paid at any relevant point in the chain in exchange for such a promise.
37. Those principles apply here. It is plain that the only reason Flexirent paid funds to FE was in order to transmit to FE the “Settlement Amount” which SMBC had been

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<sup>31</sup> Tr 122.15-16.

<sup>32</sup> MIN.5000.0006.1716.

required to pay to Flexirent under cl 4.1 of the 2018 MRASA, in connection with the purchase of the purported receivables the subject of the First to Fourth 2018 Offer Letters. The circumstance that the timing and amount of each payment from SMBC to Flexirent does not correspond strictly with a payment from Flexirent to FE does not preclude the court from treating those payments as substitutes.

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21 February 2023

## Annexure A

Respondent	Resp. no.	Total Traced as endpoint <sup>1</sup>	SMBC Funds Traced <sup>2</sup>	Cash balance remaining on liquidator's evidence <sup>3</sup>	Extent of cash remaining balance subject to trust in favour of SMBC	Judgment sum sought (basis is liability to account for amount received, unless otherwise stated)
5 Bulkara St	21st	\$3,487,428.13	\$444,268.83	\$269,836.24	\$269,836.24	\$444,268.83
6 Bulkara St	22nd	\$4,809,830.00	\$1,438,895.72	\$9,693,226.14	\$2,899,799.29 <sup>4</sup>	\$2,899,799.29 (account of profits)
8-12 Natalia Ave	26th	\$2,885,886.02	\$533,938.85	\$1,172,000.00	\$533,938.85	\$533,938.85
23 Margaret St	23rd	\$878,355.32	\$187,348.86	\$272,023.63	\$187,348.86	\$187,348.86
26 Edmonstone Rd	20th	\$2,023,347.36	\$141,973.32	\$1,874,400.01	\$141,973.32	\$141,973.32
64-66 Berkeley St	25th	\$1,774,931.12	\$1,011,742.93	NIL	Charge over 64-66 Berkeley St for \$1,011,742.93	\$1,011,742.93
286 Carlisle St	24th	\$1,470,499.84	\$539,705.74	\$13,935.00	\$13,935.00	\$539,705.74
Aramia Holdings	28th	\$461,000.00 <sup>5</sup>	\$101,914.00 <sup>6</sup>	\$1,287.74	\$1,287.74	\$101,914.00
FE	3rd	\$15,606,270.16	\$26.41	\$107,885.97	\$26.41	\$83,147,233.61 (knowing assistance)

<sup>1</sup> Except where separately footnoted, the figures in this column correspond to those in Westpac's s 50 summaries of payments to, and on behalf of, respondents, or where there is no such s 50 summary, with the Liquidator's Alternative Tracing Model results set out in Exhibit JP-18 (JP-18 (The Respondents - Alternative Tracing Model)(520489109.1)).

<sup>2</sup> *Ibid.*

<sup>3</sup> See the Table of Forum Respondent Assets and the Table of Non Controlled Cash Assets annexed to the Affidavit of Jason Preston affirmed 20 February 2023 (MIN.5000.0041.0001; MIN.5000.0041.0012 pp. 1-6; 11).

<sup>4</sup> Being a pro rata share of the profit made by 6 Bulkara St on the total financier funding traced to it, ie SMBC contributed 29.92% of the financier funding traced to 6 Bulkara St, thus SMBC claims 29.92% of the cash balance remaining in 6 Bulkara St on the liquidator's evidence.

<sup>5</sup> See Alternative Tracing Model (Exhibit JP-17 (Alternative Tracing Model) (520489108.1)), Summary – Detailed, Cell K100.

<sup>6</sup> See Alternative Tracing Model (Exhibit JP-17) (Alternative Tracing Model) (520489108.1)), Summary – Detailed, Cell H100.

Respondent	Resp. no.	Total Traced as endpoint <sup>1</sup>	SMBC Funds Traced <sup>2</sup>	Cash balance remaining on liquidator's evidence <sup>3</sup>	Extent of cash remaining balance subject to trust in favour of SMBC	Judgment sum sought (basis is liability to account for amount received, unless otherwise stated)
FEA	1st	\$138,809,010.70	\$34,011,377.17	\$34,307.21	\$34,307.21	\$83,147,233.61 (unlawful means conspiracy)
Forum Finance	6th	\$3,758,234.76	\$747,219.96	\$280,423.03	\$280,423.03	\$83,147,233.61 (knowing assistance)
Forum Fleet	8th	\$290,000.00	\$190,000.00	\$133.86	\$133.86	\$190,000
FGFS	4th	\$2,286,387.22	\$261,700.03	\$603,205.56	\$261,700.03	\$83,147,233.61 (knowing assistance)
FG	5th	\$150,656,759.23	\$27,440,745.59	\$3,331,189.63	\$3,331,189.63	\$83,147,233.61 (knowing assistance)
Imagetec FS	9th	\$0	\$0	\$144.44	-	-
Imagetec Solutions	10th	\$2,897,330.00	\$1,385,211.00	\$211,341.87	\$211,341.87	\$1,385,211.00
Intrashield	11th	\$1,227,216.34	\$50,822.69	\$604,224.52	\$50,822.69	\$50,822.69
Iugis UK	16th	\$2,343,417.04	\$666,690.08	-	-	\$666,690.08
Iugis Energy Greece	18th	\$558,421.82	\$437,226.15	-	-	\$437,226.15
Iugis Waste	14th	\$1,153,000.00	\$1,010,820.00	\$35,581.02	\$35,581.02	\$1,010,820.00
Iugis	13th	\$19,626,861.58	\$5,112,760.03	\$1,405,234.91	\$1,405,234.91	\$53,437,519.47 <sup>7</sup> (knowing assistance)
Mazcon	19th	\$14,264,185.26	\$5,630,923.04	-	-	\$5,630,923.04

<sup>7</sup> As Iugis Pty was incorporated on 12 April 2019, SMBC's knowing assistance claim against it is confined to the amounts paid out by SMBC under the 2020 MRASA (being \$83,993,909.47), less the amounts paid to SMBC by FEA (being \$30,556,390.00).

Respondent	Resp. no.	Total Traced as endpoint <sup>1</sup>	SMBC Funds Traced <sup>2</sup>	Cash balance remaining on liquidator's evidence <sup>3</sup>	Extent of cash remaining balance subject to trust in favour of SMBC	Judgment sum sought (basis is liability to account for amount received, unless otherwise stated)
Palante	27th	\$3,168,587.66	\$357,251.50	\$1,318,585.32	\$357,251.50	\$357,251.50
Mr Papas	2nd	\$3,503,875.10	\$284,742.91	-	-	\$83,147,233.61 (knowing assistance)
Spartan	12th	\$1,794,583.23	\$284,868.53	\$7,895.44	\$7,895.44	\$284,868.53
FGOC	7th	\$11,102,895.52	\$3,416,089.07	\$321,731.29	\$321,731.29	\$83,147,233.61 (knowing assistance)

## Annexure B – Status of claims against each respondent

Respondent		Status
Mr Papas	2nd	Leave granted to proceed in respondent's absence
Australian companies in liquidation:		Appeared by their Liquidators
FEA	1st	
FE	3rd	
FGFS	4th	
FG	5th	
Forum Finance	6th	
FGOC	7th	
Forum Fleet	8th	
Imagetec FS	9th	
Imagetec Solutions	10th	
Intrashield	11th	
Spartan	12th	
Iugis	13th	
Iugis Waste	14th	
26 Edmonstone Rd	20th	
5 Bulkara St	21st	
6 Bulkara St	22nd	
23 Margaret St	23rd	
286 Carlisle St	24th	
64-66 Berkeley St	25th	
8-12 Natalia Ave	26th	
Palante	27th	
Aramia	28th	
Iugis Holdings UK	15th	Claim not proceeding (dissolved UK company)
Iugis UK	16th	Leave granted to proceed in respondent's absence
Iugis Greece	17th	Proceeding discontinued
Iugis Energy Greece	18th	Leave granted to proceed in respondent's absence
Mazcon	19th	Leave granted to proceed in respondent's absence