

## NOTICE OF FILING

### Details of Filing

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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*

Registrar

### Important Information

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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Form 33  
Rule 16.32

## **Amended Defence of the Forty-Fifth Respondent**

No. NSD616/2021

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

**WESTPAC BANKING CORPORATION ABN 33 007 457 141 and Anor and another named in the Schedule**

Applicants

**GIOVANNI JOHN TESORIERO FORUM FINANCE PTY LIMITED ACN 153 301 172 and others named in the Schedule**

~~Forty-Fifth Respondent~~ Respondents

In response to the Applicants' Second Further Amended Statement of Claim dated 5 November 2021, the Forty-Fifth Respondent (**Mr Tesoriero Snr**) 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, Mr Tesoriero Snr 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)                  | Forty-Fifth Respondent                                                  |
| Prepared by (name of person/lawyer)                        | Nigel Evans                                                             |
| Law firm (if applicable)                                   | <b>APTUM LEGAL</b>                                                      |
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**A PARTIES**

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

**B THE EQWE / FORUM PROGRAMME**

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

**C THE SCHEME**

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

**D THE FRAUDULENT TRANSACTIONS**

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

1830

**E THE DISCOVERY OF THE SCHEME**

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

1833

**F - WW THE CLAIMS AGAINST THE 1<sup>ST</sup> TO 44<sup>TH</sup> RESPONDENTS**

1834- He does not know and therefore does not admit paragraphs 1834 to 2651.

2651

**XX THE CLAIM AGAINST MR TESORIERO SNR**

*(1) Funds held on trust and knowing receipt*

2651A In or around November 2012, by agreement between Mr Tesoriero Snr and Mr Tesoriero, Mr Tesoriero Snr agreed to:

- (a) advance funds to Mr Tesoriero to enable Mr Tesoriero to invest in the business conducted by the Forum group of companies; and
- (b) receive repayment of the funds advanced together with any interest that Mr Tesoriero agreed to pay Mr Tesoriero Snr when the Forum group of companies were able to generate sufficient return to enable such repayments.

2651B Between 20 November 2012 and 2 May 2017, pursuant to the agreement, Mr Tesoriero Snr advanced Mr Tesoriero the funds to allow Mr Tesoriero to invest in the Forum group of companies.

**PARTICULARS**

Mr Tesoriero Snr advanced the funds to Mr Tesoriero by allowing Mr Tesoriero to access Mr Tesoriero Snr's personal bank account to transfer the funds to the Forum group of companies.

Mr Tesoriero Snr advanced the following funds:

A \$100,000 on 20 November 2012;

- B        \$900,000 on 5 February 2013;
- C        \$60,0000 on 4 October 2013;
- D        \$200,000 on 4 October 2013;
- E        \$1,500,000 on 2 June 2014;
- F        \$100,0000 on 5 September 2014; and
- G        \$2,000,000 on 2 May 2017.

2651C Mr Tesoriero Snr did not know to which entity the funds advanced under the agreement were paid and Mr Tesoriero was responsible for directing where the funds were paid, where the repayment funds were received and for providing instructions to Mr Tesoriero Snr's accountant on the accounting treatment of the funds advanced and received.

*(1) Funds held on trust and knowing receipt*

2652 He does not know and therefore does not admit paragraph 2652.

2653 He does not know and therefore does not admit paragraph 2653.

2654 As to paragraph 2654:

- (a) he does not know and therefore does not admit that he received amounts paid pursuant to Transactions 1 to 100 or NZ1 to NZ36;
- (b) he denies that he had any knowledge whatsoever that any amounts he received were derived from Transactions 1 to 100 or NZ1 to NZ36;
- (c) in relation to any such funds, he denies that he:
  - (i) held those funds, the traceable proceeds of those funds, or any property he 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) ~~he says further that, if he did receive any such funds, then those funds (the Tesoriero Return) were paid to him by way of a return on a capital investment made in the Forum group of companies by Mr Tesoriero or others on his behalf.~~ he admits that he received funds from the Forum group of companies and says those funds related to the amounts advanced pursuant to the agreement referred to in paragraphs 2651A and 2651B above; and
- (e) otherwise denies the allegations in paragraph 2654.

**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.~~

2655 As to paragraph 2655:

- ~~(a) he refers to and repeats the matters outlined at paragraph 2654 above;~~
- ~~(a) he does not know and therefore does not admit that he received amounts paid pursuant to Transactions 1 to 100 or NZ1 to NZ36;~~
- ~~(b) if he received any such funds, he:~~
  - ~~(i) denies that any such funds were property of someone other than him or Mr Tesoriero;~~
  - ~~(ii) says further that any such funds formed part of the Tesoriero Return, and refers to and repeats the matters pleaded and particularised in paragraph 2654 above;~~
- (c) in relation to 286 Carlisle St, he admits that the amounts were paid by FGFS into a bank account in the name of 286 Carlisle St in the period 26 February 2021 to 24 June 2021, but:
  - (i) does not know and therefore does not admit that that amount was money (or the traceable proceeds of money) stolen from Westpac and WNZL;
  - (ii) says further that he did not open that bank account, was not a signatory to that bank account, did not have access to that bank account, and did not request or authorise any money to be paid into it by FGFS, or out of it on behalf of 286 Carlisle St, and was not aware of any such payments ~~at or around the time they were made;~~
  - (iii) says further that at no material time was Mr Papas a director of 286 Carlisle St or authorised to act on its behalf;
  - (iv) says further that he was not aware of the existence of that bank account at any relevant time;
  - (v) says further that the bank account was controlled by Mr Bouchahine of the Forum group of companies and the transfers of funds to and from the 286 Carlisle Street bank account during the period from at

least 7 August 2019 to 2 June 2021 were authorised by Mr Bouchahine and/or carried out by Mr Chin of the Forum group of companies;

**PARTICULARS**

Mr Tesoriero Snr refers to the following documents as examples:

- A FOG.1003.0001.0008;
- B FOG.1002.0001.0030;
- C FOG.1002.0001.0273;
- D FOG.1000.0001.4894;
- E FOG.1000.0001.4875; and
- F FOG.1000.0004.7135.

(d) otherwise denies each and every allegation therein.

2656 He denies paragraph 2656.

**PARTICULARS**

He refers to and repeats the matters pleaded and particularised in paragraphs 2654 and 2655 above.

**(2) Tort of unlawful means conspiracy**

2657 He does not know and therefore does not admit paragraph 2657.

2658 He does not know and therefore does not admit paragraph 2658.

2659 As to paragraph 2659, he:

- (a) refers to and repeats the matters pleaded and particularised in paragraph 2655~~(e)~~ above;
- (b) otherwise denies each and every allegation therein.

2660 He denies paragraph 2660.

**PARTICULARS**

He refers to and repeats the matters pleaded and particularised in paragraph 2659 above.

2661 He admits paragraph 2661 and says further that:-

- (a) 286 Carlisle Street was established by Mr Tesoriero for the purpose of acquiring a property at 286 Carlisle St, St Kilda, Victoria;
- (b) 286 Carlisle Street did not proceed with the purchase of the property;
- (c) Mr Tesoriero Snr played no role in the management of 286 Carlisle Street and was not aware of its activities.

2662 He does not know and therefore does not admit paragraph 2662 and refers to and repeats the matters outlined at paragraphs 2654 and 2655 above.

2663 He denies paragraph 2663.

#### **PARTICULARS**

He refers to and repeats the matters pleaded and particularised in paragraphs 2654, ~~and 2655~~ and 2661 above.

2664 ~~As to~~ He denies the allegations in paragraph 2664 and refers to and repeats the matters outlined in paragraphs 2654, 2655 and 2661 above., he:

- ~~(a) does not know and therefore does not admit that he received amounts derived from Transactions 1 to 100 or NZ1 to NZ36;~~
- ~~(b) says further that any such funds he received formed part of the Tesoriero Return, and refers to and repeats the matters pleaded and particularised in paragraph 2654 above;~~
- ~~(c) denies that he managed 286 Carlisle St in furtherance of the Scheme Agreement;~~
- ~~(d) denies that 286 Carlisle St was financed in whole or in part through amounts stolen from Westpac and WNZL in the period 26 February 2021 to 24 June 2021;~~
- ~~(e) denies that 286 Carlisle St received amounts derived from Transactions 1 to 100 or NZ1 to NZ36;~~
- ~~(f) refers to and repeats the matters pleaded and particularised in paragraph 2655(c) above;~~
- ~~(g) otherwise denies each and every allegation contained therein.~~

2665 He denies paragraph 2665.

#### **PARTICULARS**

He refers to and repeats the matters pleaded and particularised in paragraphs 2663 and 2664 above.

### **YY-BBB. THE CLAIMS AGAINST THE 46<sup>TH</sup> TO 49<sup>TH</sup> RESPONDENTS**

2666- He does not know and therefore does not admit paragraphs 2666 to 2711.

2711

Date: ~~20 April 2022~~ 31 October 2022

A handwritten signature in black ink that reads "Aptum" with a small superscripted plus sign (+) to the right of the word.

.....  
**SIGNED BY APTUM LEGAL**

Lawyers for the Forty-Fifth Respondent

This pleading was prepared by Nigel Evans, lawyer.



### Certificate of Lawyer

I, Nigel Evans, certify to the Court that, in relation to the defence filed on behalf of the Respondent, the factual and legal material available to me at present provides a proper basis for:

- (a) each allegation in the pleading; and
- (b) each denial in the pleading; and
- (c) each non admission in the pleading.

Date: 31 October 2022



.....  
**SIGNED BY NIGEL EVANS**

lawyer for the Forty-Fifth Respondent