

NOTICE OF FILING**Details of Filing**

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File Title: SMBC LEASING AND FINANCE, INC. ARBN 602 309 366 v FORUM
ENVIRO (AUST) PTY LTD (VOLUNTARY ADMINISTRATORS
APPOINTED) ACN 607 484 364 & 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.

The date of the filing of the document is determined pursuant to the Court's Rules.



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Form 59
Rule 29.02(1)

Affidavit

No. 681 of 2021

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

SMBC Leasing and Finance, Inc. ARBN 602 309 366

Applicant

Forum Enviro (Aust) Pty Ltd (in liquidation) ACN 607 484 364 and others

Respondents

Affidavit of: **Maria Yiasemides**
Address: Level 41, 88 Phillip Street, Sydney 2000
Occupation: Partner, Jones Day
Date: 25 January 2023

I, Maria Yiasemides, of Level 41, 88 Phillip Street, Sydney NSW 2000, solicitor, say on oath:

1. I am a partner at Jones Day and am the solicitor on the record for the applicant in the proceeding (**SMBC L&F**).
2. I swear this affidavit to be true and correct to the best of my knowledge, information and belief. Where indicated otherwise, I depose to matters on the basis of information provided by another person or source and in the belief that the source of my information is true and correct.
3. Exhibited to me at the time of swearing this affidavit is a paginated bundle of documents marked "**MY3**". Throughout this affidavit, I refer to documents in Exhibit MY3 by reference to page numbers at the bottom right hand corner of the documents contained in the exhibit.

Filed on behalf of	<u>SMBC Leasing and Finance Inc. Applicant</u>		
Prepared by	<u>Maria Yiasemides</u>		
Law firm	<u>Jones Day</u>		
Tel	<u>(02) 8272 0500</u>	Fax	<u>(02) 8272 0599</u>
Email	<u>myiasemides@jonesday.com</u>		
Address for service	<u>Level 41, 88 Phillip Street Sydney 2000</u>		

[Version 3 form approved 02/05/2019]

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4. In this affidavit, I set out the means by which SMBC L&F has sought to serve documents filed in this proceeding on:
- (a) the second respondent, Basile Papadimitriou (**Mr Papas**);
 - (b) the respondent companies registered in Greece, being:
 - (i) the seventeenth respondent, Iugis Hellas IKE (**Iugis Hellas**);
 - (ii) the eighteenth respondent, Iugis Energy SA (**Iugis Energy**); and
 - (iii) the nineteenth respondent, Mazcon Investments Hellas IKE (**Mazcon**),
(together, the **Greek Entities**); and
 - (c) the respondent companies registered in the United Kingdom, being:
 - (i) the fifteenth respondent, Iugis Holdings Limited (UK Company No. 11123437) (**Iugis Holdings**); and
 - (ii) the sixteenth respondent, Iugis (UK) Limited (UK Company No. 10745974) (**Iugis UK**),
(together, the **UK Entities**).

A. Service on Mr Papas

5. On 14 July 2021, SMBC L&F obtained orders for short service of the Originating Process filed on 14 July 2021 (the **July 2021 Orders**). Order 3 provides:
3. Pursuant to r 1.39 of the Federal Court Rules (Cth) (**FCR**), the time for service of the originating process, the interlocutory application and the supporting affidavits be abridged to 5pm, 14 July 2021 with service to be effected:
- ...
- b) on the second respondent by:
 - i. email to bpapas@forumgroup.com.au; and
 - ii. email to Panetta & Associates Lawyers at the email address r.panetta@panetta.com.au.

6. On 14 July 2021, I sent or caused to be sent a copy of the following documents to the email addresses referred to in Order 3 above:
- (a) Originating Process dated 13 July 2021;
 - (b) affidavit of Roger Dobson sworn 13 July 2021 and Exhibit RD1;
 - (c) affidavit of Michael Timpany sworn 13 July 2021 and Exhibit MT1; and

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(d) second affidavit of Roger Dobson sworn 14 July 2021.

A copy of the emails and cover letter is set out at pages 11-16 of **Exhibit MY3**.

7. On 15 July 2021, Rocco Vincenzo Panetta of Panetta Lawyers (**Mr Panetta**) filed a Notice of acting appointment of lawyer Form 4 in respect of Mr Papas in the SMBC proceedings.
8. On 6 August 2021, SMBC L&F filed a Statement of Claim, together with an Interlocutory Application seeking leave to file an Amended Originating Application. Jones Day emailed copies of each of these documents to the Associate to Justice Lee and the parties' solicitors, including Mr Panetta. A copy of this email is set out at page 17 of **Exhibit MY3**.
9. On 30 September 2021, Mr Panetta filed a Notice of ceasing to act for Mr Papas in the SMBC proceedings.
10. On 20 October 2021, Justice Lee made orders for the service of documents in the proceeding on Mr Papas (**October 2021 Orders**). Order 12 of those Orders provides:
 - (12) *Pursuant to rule 10.24 and/or rule 1.32 of the FCR, any document required to be served on Mr Papas, the second respondent in proceedings NSD681/2021 (SMBC Proceeding) and NSD642/2021 (Societe Generale Proceeding), may be served on him by:*
 - (a) *sending the documents to the [sic] Mr Papas' addresses for service that are on the court files in the proceedings:*
 - (i) *in hard copy to C/ Panetta Lawyers, Level 6, 11 Elizabeth Street Sydney NSW 2000;*
 - (ii) *by email to the email address law@panetta.com.au;*
 - (b) *sending an email to Ms Louise Agostino at loulou1743@gmail.com with a covering letter asking that Ms Agostino inform Mr Papas that:*
 - (i) *the documents can be downloaded from the electronic link at [insert]; and*
 - (ii) *a hard copy of the documents has been sent to the physical address referred to in order 12(a)(i) above and emailed to the email address referred to in order 12(a)(ii) above;*
 - (c) *sending a short message service (sms) to the "Greek phone number" for Mr Papas, being the number identified in confidential*

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exhibit RVP-02 tendered on 6 October 2021 in the Westpac Proceeding, with the following message:

Dear Mr Papas

This is a message from [insert], solicitors for [insert] in Federal Court of Australia Proceeding [insert]. By this message and the link we serve on you [insert].

[insert link]

Please contact [insert] via email to [insert] to advise an email address to contact you on.

11. On 5 November 2021, SMBC L&F filed an interlocutory application seeking leave to file and serve a Further Amended Originating Application (**FAOA**) and an Amended Statement of Claim (**ASOC**). I caused a copy of the interlocutory application annexing the FAOA and ASOC, as well a copy of my first affidavit sworn 5 November 2021 and Exhibit MY1, to be:
- (a) delivered in hard copy to the offices of Panetta Lawyers (an affidavit of Mr Henness has been sworn on 25 January 2023 in relation to delivery of same (**Henness Affidavit**));
 - (b) sent via email to Mr Panetta;
 - (c) sent via two emails to loulou1743@gmail.com, together with a cover letter addressed to Ms Agostino; and
 - (d) sent by me via SMS from my mobile phone to the Greek phone number for Mr Papas (the Greek phone number was obtained by me from confidential exhibit RVP-02 tendered on 6 October 2021 in the Westpac Proceeding).

A copy of each of the communications referred to above is at pages 18 to 23 of **Exhibit MY3**.

12. Pursuant to Orders made on 12 November 2021, SMBC L&F filed the FAOA and ASOC on 19 November 2021. I caused copies of those documents to be:
- (a) delivered in hard copy to the offices of Panetta Lawyers (an affidavit of Mr Henness has been sworn on 25 January 2023 in relation to delivery of same);
 - (b) sent via email to law@panetta.com.au on 19 November 2021;
 - (c) sent via email to loulou1743@gmail.com, together with a cover letter addressed to Ms Agostino on 22 November 2021;

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(d) sent by me via SMS to the Greek phone number for Mr Papas on 19 November 2021.

A copy of each of the communications referred to above is at pages 24 to 27 of **Exhibit MY3**.

13. On 4 February 2022, I caused copies of the following affidavits filed by SMBC L&F in the proceeding:

- (a) affidavit of Lorenzo Kozlovic sworn 1 February 2022;
 - (b) affidavit of Gurpreet Brar sworn 3 February 2022;
 - (c) affidavit of Julian Gaillard sworn 4 February 2022; and
 - (d) second affidavit of Michael Timpany sworn 4 February 2022 and Exhibit MT2,
- to be:
- (e) delivered in hard copy to the offices of Panetta Lawyers (an affidavit of Mr Henness has been sworn on 25 January 2023 in relation to delivery of same);
 - (f) sent via email to law@panetta.com.au on 4 February 2022;
 - (g) sent email to loulou1743@gmail.com, together with a cover letter addressed to Ms Agostino on 4 February 2022; and
 - (h) sent by me via SMS to the Greek phone number for Mr Papas on 4 February 2022.

A copy of each of the communications referred to above is at pages 28 to 31 of **Exhibit MY3**.

14. On 10 March 2022 (the **March 2022 Orders**), Justice Lee made orders amending the October 2021 Orders to correct a typographical error in the address of Panetta Lawyers in that order. Order 1 provides:

1. Pursuant to FCR 39.05, Order 7(g)(i) of the orders made by Justice Lee dated 20 October 2021 be amended nunc pro tunc from 20 October 2021 to read:

In hard copy to C/ Panetta Lawyers, Level 6, 111 Elizabeth Street Sydney NSW 2000.

15. Despite the typographical error in the October 2021 Orders, I am aware from the Henness Affidavit that Mr Henness had been delivering the hard copy documents referred to in the above paragraphs to the corrected address for Panetta Lawyers provided in the March 2022 Orders.

16. New orders for substituted service were also made in the March 2022 Orders. Order 4 provides:

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4. Pursuant to FCR 10.24, each of the applicants serve any material they will rely on at the trial in these proceedings scheduled to commence on 10 October 2022 and any other material filed from the date of these orders concerning Mr Basile Papadimitriou (Mr Papas), on Mr Papas via each of the following means:

- a) sending the documents to the addresses noted in the Form 10 Notice of Address for Service filed in those proceedings by Mr Papas, by email to law@panetta.com.au;
- b) sending a short message service (sms) to the "Greek phone number" for Mr Papas, being the number identified in confidential exhibit RVP-02 tendered on 6 October 2021 in the Westpac proceeding, containing an unprotected online file share link with the material to be served; and
- c) sending an email to Rebekah Giles of Company (Giles) to the address rebekah@companygiles.com.au. If that material is too voluminous to attach to an email, the email is to contain an unprotected online file share link with the material to be served.

17. On 30 May 2022, Order 4(a) of the March Orders was amended as follows:

1. Order 4(a) of the orders made by Justice Lee dated 10 March 2022 be amended to read:

sending the documents to the email address noted in the Form 10 Notice of Address for Service filed in the Westpac Proceeding by Mr Papas, that is, by email to law@panetta.com.au

18. On 4 July 2022, I caused a copy of the affidavit of Daniel Conlon sworn 14 June 2022 and a copy of the affidavit of Michael Timpany sworn 4 July 2022 to be sent:

- (a) via email to law@panetta.com.au on 4 July 2022;
- (b) by me via SMS to the Greek phone number of Mr Papas on 4 July 2022; and
- (c) via email to rebekah@companygiles.com.au on 4 July 2022.

A copy of each of the communications referred to above is at pages 32-34 of **Exhibit MY3**.

19. On 22 December 2022, SMBC L&F was granted leave to file and serve a Second Further Amended Originating Application (**2FAOA**) and an Addendum to the Amended Statement of Claim. SMBC L&F filed these documents on 22 December 2022. On that day, I caused a copy of those documents to be sent:

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- (a) via email to law@panetta.com.au;
- (b) by me via SMS to the Greek phone number for Mr Papas; and
- (c) via email to rebekah@companygiles.com.au.

A copy of each of the communications referred to above is at pages 35-36 of **Exhibit MY3**.

B. Service on the Greek Entities

- 20. As set out at paragraph [12], SMBC L&F filed the FAOA and ASOC on 19 November 2021. The amendments to those documents included the addition of Iugis Hellas, Iugis Energy and Mazcon as respondents to the proceeding.
- 21. Pursuant to the orders made on 12 November 2021 (**Foreign Service Orders**), service of the FAOA and ASOC on Iugis Hellas, Iugis Energy and Mazcon was to be effected in accordance with the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters done at The Hague on 15 November 1965 (**Hague Convention**), which requires translation of the FAOA and ASOC into Greek, and for those documents to be notarised and apostilled. Order 17 of the Foreign Service Orders provides:

17. SMBC has leave pursuant to rule 10.43(2) of the Federal Court Rules 2011 (Cth) (FCR) to serve the further amended originating application and the amended statement of claim in the form provided to the Court on 12 November 2021 (SMBC Amended OA and SOC) on:

- (a) the seventeenth respondent, Iugis Hellas IKE;*
- (b) the eighteenth respondent, Iugis Energy SA; and*
- (c) the nineteenth respondent, Mazcon Investments Hellas IKE,*

in the Hellenic Republic in accordance with the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters done at The Hague on 15 November 1965 by the Court Bailiff of the Court in Athens pursuant to Article 134 of the Greek Civil Procedural Code at the following addresses:

- (d) the seventeenth respondent, Iugis Hellas IKE, at Giannitson 90, 54627 Thessaloniki, Greece;*
- (e) the eighteenth respondent, Iugis Energy SA, at Building square 48A, 57022 Sindos, Thessaloniki, Greece;*

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(f) *the nineteenth respondent, Mazcon Investments Hellas IKE, at 17 Ionos Dragoumi, 54625 Thessaloniki, Greece.*

22. On 23 May 2022, SMBC L&F obtained orders amending the Foreign Service Orders for service of the FAOA and ASOC on Iugis Hellas, Iugis Energy, and Mazcon. Order 2 provides:

2. *Order 17 of the Orders made by Justice Lee on 12 November 2021 is varied as follows:*

The applicants, SMBC Leasing and Finance, Inc. Sydney Branch, ARBN 602 309 366 (SMBC) has leave pursuant to FCR 10.43(2) to serve the further amended originating application and the amended statement of claim in the form provided to the Court on 12 November 2021 (SMBC Amended OA and SOC) on:

(a) *the seventeenth respondent, Iugis Hellas IKE;*

(b) *the eighteenth respondent, Iugis Energy SA; and*

(c) *the nineteenth respondent, Mazcon Investments Hellas IKE,*

in the Hellenic Republic in accordance with the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters done at The Hague on 15 November 1965 (Hague Convention) in accordance with Article 5(1)(a) of the Hague Convention at the following addresses:

(d) *the seventeenth respondent, Iugis Hellas IKE, at Giannitson 90, 54627 Thessaloniki, Greece;*

(e) *the eighteenth respondent, Iugis Energy SA, at Building square 48A, Industrial Area of Thessaloniki, 57022 Sindos, Thessaloniki, Greece; and*

(f) *the nineteenth respondent, Mazcon Investments Hellas IKE, at 17 Ionos Dragoumi, 54625 Thessaloniki, Greece.*

23. On 11 August 2022, the FAOA and ASOC, together with translated copies, were provided to the Federal Court Registry of New South Wales (the **Australian Registry**) for postage to the Central Authority in Greece, being the Hellenic Ministry of Justice.

24. On 24 November 2022, the Australian Registry provided SMBC L&F with two certificates of no service in respect of Iugis Hellas and Mazcon. On 29 November 2022, the Australian Registry provided a certificate of no service in respect of Iugis Energy. Copies of the certificates of no service in relation to Iugis Hellas, Mazcon and Iugis Energy are at pages 27-32 of **Exhibit MY3**.

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25. On 23 December 2022, SMBC L&F obtained amended orders for service of the FAOA and ASOC on Mazcon and Iugis Energy via their Greek directors under the Hague Convention. SMBC L&F is currently pursuing service upon these entities via their directors in Greece.
26. On 25 January 2023, the FAOA and ASOC, together with translated copies, were provided to the Australian Registry for postage to the Central Authority in Greece, being the Hellenic Ministry of Justice.
27. In respect of Iugis Hellas, I am informed by Maria Kanellopoulou, a Senior Associate of Kyriakides Georgopoulos Law Firm, a Greek Law firm that SMBC L&F has retained, that the company is now in liquidation and that a "Mr Vasileios Papadimitriou" has been appointed as the liquidator of the company. I understand from my involvement in these proceedings and related proceedings involving Westpac Banking Corporation and the liquidations of various companies controlled by Mr Papas, that "Vasileios Papadimitriou" is Mr Papas' full name in Greece.
28. I am aware from my involvement in these and the related proceedings that the director of Iugis Energy, Mr Craig Rollinson, resides in Australia. SMBC L&F engaged a process server (Paulene Amanda Hill) to personally serve Mr Rollinson in Sydney. On 6 January 2023, SMBC L&F filed the affidavit of service of Paulene Amanda Hill sworn 5 January 2023 in relation to the service of the 2FAOA and ASOC on Mr Rollinson.
29. On 9 January 2023, Jones Day sent a letter to Mr Rollinson asking that he confirm whether Iugis Energy intends to appear in and defend the proceeding. A copy of that letter, together with a printout of the Australia Post tracking page confirming delivery of the letter by registered post to Mr Rollinson's Sydney address in West Pymble is at pages 43-47 of **Exhibit MY3**.
30. As at the date of this affidavit, I have not received any response to my letter of 9 January 2023.

C. Service on the UK Entities

31. In the Foreign Service Orders, SMBC L&F obtained leave to serve the FAOA and ASOC on the UK Entities in accordance with the Hague Convention. Order 18 provides:

18. SMBC has leave pursuant to rule 10.43(2) of the FCR to serve the SMBC Amended OA and SOC on:

(a) the fifteenth respondent, Iugis Holdings Limited (UK Company No. 11123437); and

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(b) the sixteenth respondent, Iugis (UK) Limited (UK Company No. 10745974),

in the United Kingdom in accordance with the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters done at The Hague on 15 November 1965 by sending a copy of the originating process as issued by this Court by international registered post with return receipt to:

(a) the fifteenth respondent, Iugis Holdings Limited (UK Company No. 11123437) at 64 New Cavendish Street, London, United Kingdom, W1G 8TB; and

(b) the sixteenth respondent, Iugis (UK) Limited (UK Company No. 10745974) at 64 New Cavendish Street, London, United Kingdom, W1G 8TB.

32. Pursuant to Order 18 of the Foreign Service Orders, on 26 November 2021, I caused copies of SMBC's Amended Originating Application and Statement of Claim to be sent to the fifteenth and sixteenth respondents at the address specified in the Foreign Service Orders by international registered post. SMBC L&F received an email from Australia Post confirming that their records confirmed the Amended Originating Application and Statement of Claim had been delivered to the United Kingdom by the Royal Mail on 1 December 2021. A copy of the email from Australia Post confirming delivery of the Amended Originating Application and Statement of Claim by the Royal Mail on 1 December 2021 is at pages 48-49 of **Exhibit MY3**.

Sworn Affirmed by the deponent
At Sydney
in New South Wales
on 25 January 2023
Before me:

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)
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Signature of deponent


Signature of witness

Prashant Keshiker
Solicitor

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