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### Details of Filing

Document Lodged:	Outline of Submissions
File Number:	NSD616/2021
File Title:	WESTPAC BANKING CORPORATION ABN 33 007 457 141 & ANOR v FORUM FINANCE PTY LIMITED & ORS
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



A handwritten signature in blue ink that reads 'Sia Lagos'.

Dated: 19/10/2021 5:00:10 PM AEDT

Registrar

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**Westpac Banking Corporation & Anor v Forum Finance Pty Ltd (in liquidation) & Ors**

**Federal Court of Australia NSD 616/2021**

**APPLICANTS' OUTLINE OF SUBMISSIONS**

**FOR HEARING ON 20 OCTOBER 2021**

**Introduction**

1. At the hearing on 20 October 2021 broadly the following matters will be before the Court:
  - a. the freezing orders sought against four companies, one associated with the second respondent, Mr Basile Papadimitriou (also known as **Bill Papas**) (**Mr Papas**), and three associated with the third respondent, Mr Vincenzo Frank Tesoriero (**Mr Tesoriero**);
  - b. substituted service of the interlocutory application dated 23 September 2021 seeking that Mr Papas be punished for contempt or issue of a warrant for Mr Papas' arrest to bring him before the Court to answer the charges of contempt alleged against him;
  - c. winding up of the three companies in relation to which provisional liquidators have been appointed; and
  - d. case management orders to progress the proceeding towards trial.
2. The orders which are sought by the applicants, Westpac Banking Corporation (**Westpac**) and Westpac New Zealand Limited (**WZNL**), are set out in the short minutes of order which have been provided to the Court: CB tab 3. The proceeding is listed together with proceeding NSD681/2021 commenced by SMBC Leasing and Finance, Inc. Sydney Branch (**SMBC Proceeding**) and proceeding NSD642/2021 commenced by Societe Generale (**SocGen Proceeding**). It is anticipated that the proposed directions provided to the Court incorporate directions proposed by SMBC and SocGen.

## Evidence before the Court

3. For the purposes of the hearing, a court book containing the evidence and other materials relied upon by the applicants has been prepared which includes:
  - a. the affidavits of Caitlin Maria Murray of 30 September 2021 (**Murray 30 Sept**); 18 October 2021 (**Murray Contempt**); and 19 October 2021 (**Murray 19 Oct**): CB tab 5, 16, and 8 respectively;
  - b. the exhibits to Murray 30 Sept and Murray 19 Oct, CMM-14 and CMM-16 respectively: CB tab 6 and 9; and
  - c. affidavits as to service of the interlocutory process seeking freezing orders and evidence of Damien Phillip Jones of 14 October 2021 (**Jones Affidavit**): CB tab 10; and Adam William Beggs of 15 October 2021 (**Beggs Affidavit**) CB tab 11.<sup>1</sup>

## Freezing order application

4. By interlocutory application dated 30 September 2021 (**FO Application**)<sup>2</sup>, the applicants seek freezing orders against:
  - a. an entity associated with Mr Papas, namely Palante Pty Ltd (**Palante**) (the twenty-eighth respondent to the proceeding). Mr Papas is, and at all relevant times has been, the sole director and shareholder of Palante;<sup>3</sup> and
  - b. three entities associated with Mr Tesoriero, 286 Carlisle Street Pty Ltd (**286 Carlisle**), Tesoriero Investment Group Pty Ltd (**TIG**), and 8-12 Natalia Ave Oakleigh Pty Ltd (**Natalia Ave**), respectively the twenty-fifth, thirty-eighth and forty-first respondents (together the **Tesoriero FO Companies**). Mr Tesoriero is, and has been at all relevant times, a director and shareholder of each of the Tesoriero FO Companies.<sup>4</sup>
5. Although the solicitor for Mr Tesoriero, Mr Nasimi, stated to the Court on 1 October 2021 that the FO Application against the Tesoriero FO Companies could be dealt with by consent (because the orders could be made by consent)<sup>5</sup> and despite repeated

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<sup>1</sup> Due to the size of the exhibit to Mr Beggs' affidavit, the full version has exhibit / annexure have not been included in the Court book as it exhibits the Murray 30 Sept Affidavit, Exhibit CMM-14 and the interlocutory application dated 30 September 2021.

<sup>2</sup> CB tab 4

<sup>3</sup> Murray 30 Sept [40].

<sup>4</sup> Murray 30 Sept [22]; [28]; and [31].

<sup>5</sup> CMM-16 p109

correspondence sent to Mr Nasimi, consent to a form of order has not been provided: Murray 19 Oct at [24] to [35], CMM-16 p102; p108, p 137, p163. Indeed, Mr Nasimi has, despite request, not stated whether he has instructions to act for the Tesoriero FO Companies: Murray 19 Oct at [29], CMM-16 p163.

Service of the application

6. The FO Application, together with the supporting materials, was served on:
  - a. Palante at its registered office on 11 October 2021: Jones Affidavit: CB tab 10;
  - b. the Tesoriero FO Companies, under s 109X of the *Corporations Act* 2001 (Cth), by service on Mr Tesoriero personally on 12 October 2021: Beggs Affidavit: CB tab 11.
7. Notice of the FO Application, its service on the Tesoriero FO Companies and of the applicants' intention to move for the orders sought in the FO Application on 20 October 2021 has also been provided to Mr Nasimi: Murray 19 Oct at [32]-[33]. CMM-16 p163, p166. Further, at the time the FO Application was served on Mr Tesoriero he requested that it be noted that the documents were being handed "*straight to my lawyer*": Beggs Affidavit [6].<sup>6</sup> Similarly, the FO Application and evidence has been made available to Mr Papas by text message (with a link to the documents) sent to the email address provided by his former solicitor: Murray 19 Oct at [41]; CMM-16 p213.

Short factual summary

8. The broad facts leading to these proceedings is concisely summarised in *Westpac Banking Corporation v Forum Finance Pty Limited* [2021] FCA 807 (***Westpac v Forum***) at [1]-[6]. By way of brief context for the purposes of the freezing order application, the evidence establishes, *prima facie*, that Forum Finance Pty Ltd (in liquidation) (**Forum Finance**) was, in the period from September 2018 to June 2021, a vehicle through which a significant fraud, perpetrated on Westpac, was carried out: *Westpac v Forum* at [2]-[4], [10]-[11].<sup>7</sup> The evidence of the dishonest and fraudulent conduct is significant and compelling, the "customers" alleged to have purchased the

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<sup>6</sup> And at the time was at the office of Madgwicks: Beggs Affidavit at [3].

<sup>7</sup> A summary of the fraudulent scheme and the existing evidence in relation to that scheme is set out in the submissions dated 28 June 2021: see [1]-[5]; [9]-[12] and the submissions dated 8 July 2021: see [18] and Schedule A.

equipment are each reputable and have confirmed in writing that the equipment purchase agreements are false.<sup>8</sup>

9. Since early July 2021 Westpac has identified, through bank statements and trace reports, that a significant majority of the amount of funds that it paid to Forum Finance as a consequent of the fraud were then paid to Forum Group Financial Services Pty Ltd (provisional liquidators appointed) (**FGFS**), with at least \$277 million and probably in excess of \$289 million of Westpac's money paid by Forum Finance to FGFS: Murray 30 Sept at [11]-[16]; CMM-14 p69-77; CMM-7 p82 (**FGFS bank statements**).
10. A similar fraud which was perpetrated against WZNL has been discovered: Murray 30 Sept at [8]. The evidence establishes that WZNL was dishonestly induced to pay in excess of NZ\$58 million to IUGIS (NZ) Limited (**IUGIS NZ**), of which it has not recovered in excess of NZ\$40 million: Murray September at [8]. IUGIS NZ is a company incorporated in New Zealand, the sole director and shareholder of which is Mr Papas: CMM-14 at p3. Those funds have been paid from IUGIS NZ to FGFS: Murray 30 Sept at [10]-[17], CMM-14 p7-68 (**IUGIS bank statements**).
11. The evidence establishes *prima facie* that the funds misappropriated from Westpac and paid to Forum Finance, and the funds misappropriated from WZNL and paid to IUGIS NZ, have been paid to FGFS. As both Forum Finance and IUGIS NZ received, in effect, stolen funds from Westpac and WZNL respectively, those funds were held on trust for Westpac and WZNL.<sup>9</sup> The evidence shows that the vast majority of funds held by FGFS originated from the applicants, at least inferentially those moneys were received by FGFS as part of the fraudulent scheme. When the money was paid to FGFS it too held that money on trust: as a participant in the scheme, because Mr Papas' and Mr Tesoriero's knowledge is attributed to it and as a volunteer.
12. At all relevant times (a) Mr Papas and Mr Tesoriero were the directors of Forum Finance (or in relation to Mr Tesoriero, on his version for some of that time);<sup>10</sup> (b) Mr Papas was a director and shareholder of FGFS,<sup>11</sup> IUGIS NZ,<sup>12</sup> and Palante;<sup>13</sup> and (c) Mr Tesoriero

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<sup>8</sup> See Schedule A to the submissions dated 8 July 2021 for a summary of that evidence, a further copy of which is included in the Court Book: CB tab 2.

<sup>9</sup> *Black v S Freedman & Co* (1910) 12 CLR 105; *Fistar v Riverwood Legion and Community Club* (2016) 91 NSWLR 732 at [36] per Leeming JA.

<sup>10</sup> The Forum Finance ASIC search is at CMM-16 p215

<sup>11</sup> JI-2 p1 at p2 and p5.

<sup>12</sup> IUGIS NZ company extract: CMM-14 p2.

<sup>13</sup> ASIC Search: CMM-14 p212.

was a director and shareholder of 286 Carlisle,<sup>14</sup> TIG,<sup>15</sup> and Natalia Ave;<sup>16</sup> and was also a shareholder of FGFS.<sup>17</sup> Mr Tesoriero was also either a director of Forum Finance at all relevant times<sup>18</sup> and FGFS until April 2020,<sup>19</sup> or was a director of Forum Finance and FGFS until around April 2020.

13. Mr Papas' knowledge of the fraudulent conduct (and his fraudulent conduct) is attributed to FGFS, as Mr Papas was a director of FGFS at all relevant times.<sup>20</sup> The same follows in relation to Mr Tesoriero during the period that Mr Tesoriero was a director. Westpac and WNZL's claims against FGFS include that it held the money that it received as a result of the fraudulent scheme on trust for Westpac and WNZL.<sup>21</sup> There is *prima facie* evidence to establish that FGFS has received the misappropriated funds knowing of the fraud, as a party to the scheme or as a volunteer, and that it held that money or the traceable proceeds on trust for the applicants.<sup>22</sup>

#### Payments from FGFS

14. Xero accounting records kept in relation to FGFS reveal:<sup>23</sup>
- a. *Palante*: as at 30 June 2021 net payments by FGFS to Palante (or to its benefit) in the amount of \$2,621,939.81: Murray 30 Sept at [18] and [41]; CMM-14 p81: CB tab 7. A worksheet from the same Xero records setting out the detail of the payments is CMM-14 p225;
  - b. *286 Carlisle*: as at 30 June 2021 net payments by FGFS to 286 Carlisle (or to its benefit) in the amount of \$2,200,000: Murray 30 Sept at [23]; CMM-14 p81, CB tab 7, with the underlying Xero worksheet at CMM-14 p94;

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<sup>14</sup> Mr Giovanni Tesoriero (**Mr Tesoriero Snr**), understood to be Mr Tesoriero's father was also a director of 286 Carlisle at all relevant times. The ASIC search is at CMM-14 p82.

<sup>15</sup> Mr Tesoriero Snr was also a director of TIG at all relevant times. The ASIC search is at CMM-14 p124.

<sup>16</sup> The ASIC search is at CMM-14 p170.

<sup>17</sup> JI-2 p1 at p5

<sup>18</sup> CMM-16 p215

<sup>19</sup> JI-2 p1 at p2

<sup>20</sup> See *Meridian Global Funds Management Asia Ltd v Securities Commission* [1995] 2 AC 500 at 511 (per Lord Hoffman); *Commonwealth Bank of Australia v Kojic* [2016] FCAFC 186; 249 FCR 421 at [94]-[105].

<sup>21</sup> See further amended statement of claim filed 23 September 2021 (**FASOC**) [1913]-[1917].

<sup>22</sup> *Fistar v Riverwood Legion and Community Club Ltd* (2016) 91 NSWLR 732 at [39] per Leeming JA; see further analysis in submissions dated 8 July 2021, at [59]-[62].

<sup>23</sup> For the avoidance of doubt, the applicants do not accept the characterisation of any funds paid from FGFS to any of these entities as being a loan, however, the underlying worksheets does appear to record (possibly with the exception of entries described as "manual journal") funds paid out to, or for the benefit of, those entities.

- c. *TIG*: as at 30 June 2021, net payments by FGFS to TIG (or to its benefit) in the amount of \$1,159,393.34: Murray 30 Sept at [29]; CMM-14 p81, CB tab 7, with the underlying Xero worksheet at CMM-14 p136; and
  - d. *Natalia Ave*: as at 30 June 2021, net payments by FGFS to Natalia Ave (or at its direction) in the amount of \$2,122,155.18: Murray 30 Sept at [32]; CMM-14 p81, CB tab 7, with the underlying Xero worksheet at CMM-14 p181 (although these payments appear to have been in relation to land Mr Tesoriero had contracted to buy).
15. Each of these is further described later in these submissions. The applicants' case is that each company has (a) received money stolen from Westpac or WZNL, with knowledge of the fraud; (b) holds those moneys on trust for Westpac or WZNL; and (c) is liable to account for, or compensate the applicants, in relation to funds received from FGFS (as explained in the next section, each is also alleged to have been part of the scheme and liable for all losses).

*Prima face case*

16. Before turning to a summary of the payments each entity has received it is convenient to set out the *prima facie* case against each entity. There is an element of repetition in the claims which have been brought against each of Palante and the Tesoriero FO Companies and for this reason, the claims are addressed together.
17. The claims can be stated, at a level of abstraction, as follows (a) a trust claim;<sup>24</sup> (b) an unlawful means conspiracy claim;<sup>25</sup> (c) a knowing receipt and assistance claim;<sup>26</sup> and (d) a claim of involvement in Mr Papas' and Forum Finance's misleading or deceptive conduct.<sup>27</sup>
18. The principles in relation to these claims were articulated in detail in Westpac's submissions<sup>28</sup> dated 8 July 2021 (**July Submissions**) and are, in part, repeated here to explain the basis of the claims against these entities.

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<sup>24</sup> As to the claim against Palante: see FASOC [2348]-[2351], the particulars to that claim presently only assert an amount of \$2.621 million as being known to the applicants at that time; 286 Carlisle: see FASOC [2294]-[2297]; TIG: see FASOC: [2522]-[2525]; and Natalia Ave: see FASOC [2579]-[2582].

<sup>25</sup> See FASOC: Palante [2352]-[2356]; 286 Carlisle [2298]-[2302]; TIG [2526]-[2530]; and Natalia Ave [2583]-[2587]

<sup>26</sup> See FASOC: Palante[2357]-[2364]; 286 Carlisle [2306]-[2310]; TIG [2531]-[2538]; and Natalia Ave [2588]-[2595]

<sup>27</sup> See FASOC: Palante [2365]; 286 Carlisle [2311]; TIG [2539]-[2540]; and Natalia Ave [2596]-[2597]

<sup>28</sup> At that time, only Westpac was applicant on the proceeding.

19. In relation to the trust claim, there can be little dispute that a thief or a recipient of stolen property from a thief (at least with knowledge or a volunteer) holds stolen property on trust for the owner.<sup>29</sup> Consequently, any money fraudulently obtained from Westpac or WNZL, or the traceable proceeds of that money, received by Palante or the Tesoriero FO Companies is held on trust for the applicants. *Prima facie* the applicants have been able to trace money to Forum Finance, from Forum Finance to FGFS and from FGFS to Palante and each of the Tesoriero FO Companies. In addition to holding the traceable proceeds on trust, each company will be required to account to the applicants in relation to that trust property, alternatively will be required to pay equitable compensation in relation to amounts received (including received and paid away).
20. The knowing receipt and assistance claim similarly has been established against Palante and the Tesoriero FO Companies, to a *prima facie* standard, on the evidence before the Court. As set out in the July Submissions at [67], *Barnes v Addy*<sup>30</sup> identifies the following causes of action: (a) a person who receives property with knowledge that the property is transferred in breach of fiduciary duty holds that property on trust for the person to whom the fiduciary duty was owed; and (b) a person who assists a fiduciary with knowledge of a dishonest and fraudulent design on the part of the fiduciary is liable as though they were the fiduciary.<sup>31</sup> This includes liability to disgorge the property transferred to the accessory by another person in breach of that person's fiduciary duty, as well as *in personam* liability.<sup>32</sup>
21. Having regard to these principles and that the knowledge of Mr Papas which will be attributed to Palante, Palante *prima facie* holds funds it has received from FGFS on trust for the applicants and is required to restore those funds (or the traceable proceeds) to the applicants or pay equitable compensation in relation to the amounts received. By a process of similar reasoning, the knowledge of Mr Tesoriero is attributed to each of the Tesoriero FO Companies and those companies hold the money received from FGFS (or traceable proceeds) on trust for the applicants.

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<sup>29</sup> *Black v S Freedman & Co* (1910) 12 CLR 105; *Fistar v Riverwood Legion and Community Club* (2016) 91 NSWLR 732 at [36] per Leeming JA

<sup>30</sup> (1874) LR 9 Ch App 244.

<sup>31</sup> *Farah Constructions Pty Ltd v Say-Dee Pty Ltd* (2007) 230 CLR 89 at [160].

<sup>32</sup> For example, *Sheahan v Thompson (No 2)* [2015] NSWSC 871 at [141]–[146].



22. As to the claim for unlawful means conspiracy, it is necessary to show:<sup>33</sup> (a) there was an agreement between two or more persons; (b) there was an intention to injure, which element will be fulfilled if the conspiracy and the unlawful means were directed at the applicants; (c) the agreement was carried into effect in whole or in part; and (d) the applicants suffered some pecuniary loss as a result of the respondents' acts in furtherance of their agreement.
23. On the evidence there is a *prima facie* case that Mr Papas, Mr Tesoriero and others (relevantly, the companies which participated in the scheme including Palante and the Tesoriero FO Companies) formed an agreement to implement the dishonest scheme, which was the fraud on Westpac and WZNL, the proceeds of which were paid to FGFS and then to others for the benefit of Mr Papas and Mr Tesoriero. It is clear from the evidence summarised earlier in these submissions that this agreement was carried into effect. Palante is a party to the fraudulent scheme due to the knowledge and control of it by My Papas, and its role as a recipient of the fraudulently obtained money. The Tesoriero FO Companies are each a party to the fraudulent scheme through the knowledge and control of them of Mr Tesoriero, and their role as recipients of the fraudulently obtained money (286 Carlisle appears to have had a further role as a conduit to transfer fraudulently obtained money overseas). The applicants' claim is that Palante and each of the Tesoriero FO Companies, as conspirators, are liable for all of the losses arising from the conspiracy (at least from the time of their involvement).
24. As to the misleading and deceptive conduct claim, Palante and the Tesoriero FO Companies were involved in Forum Finance's and Mr Papas' misleading or deceptive conduct for the same reasons. That claim arises from the provision by Forum Finance and Mr Papas to Westpac's and WNZL's agent of the false transaction documents, which contained dishonest representations as to the veracity and authenticity of those transactions: see Part D of the FASOC. Those representations were false or misleading in that the transactions were not genuine transactions.<sup>34</sup> Westpac has suffered loss as a result of these false or misleading representations. Section 236 of the *Australian Consumer Law* allows for the applicants to recover all of the losses suffered because of this conduct.<sup>35</sup> Likewise, s 236 enables a person who suffers loss and damage to recover

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<sup>33</sup> See recitation of the elements in *Australian Wool Innovation Ltd v Newkirk* [2005] FCA 290 (2005) ATPR 42-053 at [59]-[64] per Hely J.

<sup>34</sup> See Schedule A to the July Submissions: CB tab 2

<sup>35</sup> *Henville v Walker* [2001] HCA 52; (2001) 206 CLR 459 per Gleeson CJ

not only from the contravener but also from those involved in the contravention.<sup>36</sup> In this way, Palante and the Tesoriero FO Companies, each having been involved in the primary contravention, is liable to the applicants for the loss suffered by reason of the false and misleading representations of Forum Finance and Mr Papas from the time of the companies' involvement.

25. For those reasons, the applicants have established have a *prima facie* case against Palante and each of the Tesoriero FO Companies for all or most of the loss suffered.

Freezing order sought against Palante

26. As set out above, the FGFS Xero records evidence payments by FGFS to Palante in the amount of \$2,621,939.81. An annotated version of this worksheet showing the corresponding evidence reference for the various bank account statements is at **Annexure A** to these submissions (this and the other annexures are a work in progress in the sense that further receipts in the bank statements may be able to be identified). Perhaps unsurprisingly, the financial statements for Palante for the financial years ending 30 June 2019 and 30 June 2020 (**FY20**), which appear to have been signed by Mr Papas, do not record any loan from FGFS: Murray 30 Sept at [44]; CMM-14 p288 and p303. The financial statements for FY20 record income from FGFS in the amount of \$64,413: CMM-14 p303 at p305. That fact shows the financial statements (and characterisation by the fraudsters of the character of the transactions) to be unreliable. But as the Xero records record payments shown in bank statements, it is clear that the payments (manual entries aside) as recorded were made.
27. In addition to the amounts recorded in Xero records as being paid to, or for the benefit of, Palante the bank statements for FGFS and Palante and the trace report shows that additional funds have been paid to Palante from FGFS. A summary of these payments, at **Annexure B** to these submissions, shows additional payments in the total amount of \$245,000 paid to Palante from FGFS which are not recorded in the Xero worksheet. It is presently not known why these amounts have not been recorded in the FGFS accounts in Xero. The total amount which has, to date, been identified as being paid to or for the benefit of Palante is \$2,866,939.81.

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<sup>36</sup> *I&L Securities v HTW Valuers (Brisbane) Pty Ltd* [2002] HCA 41; (2002) 210 CLR 109 at [43] per Gaudron, Gummow and Hayne JJ.

28. Included in the Xero worksheet is reference to payments made “*into client investment account at Macrovue Pty Ltd*” together with other payments which refer to “Macrovue”: CMM-14 p225. Macrovue Pty Ltd (**Macrovue**) is an online share trading broker: Murray 30 Sept at [45]; CMM-14 p313-318. Macrovue produced documents in response to subpoenas. Those documents prove that Palante is the holder of a trading account, number 1545, with Macrovue (**Macrovue Account**): Murray 30 Sept at [45]; CMM-14 p333. The documents produced by Macrovue evidence that, at 31 August 2021, the Palante account held \$323,638.17 in cash and shares with a value of \$576,623.12: CMM-14 p336. Records produced by Macrovue also show payments into the Macrovue Account which correspond with payments made by FGFS and which are described in the Xero report as being paid to Macrovue: CMM-14 p420-422.<sup>37</sup>
29. The applicants consequently can prove that moneys have been paid by FGFS into the Macrovue Account in the name of Palante and, absent explanation, there is a good basis to conclude that the money and shares held in the Macrovue Account are held on trust for the applicants.
30. Payments out of the Macrovue Account are identified detail later in these submissions. Those payments include payments made after the freezing order was granted in relation to Mr Papas’ assets and which were paid to Mr Eric Constantinidis. On 9 September 2021, MinterEllison sent a letter to Mr Panetta (then the solicitor for Palante) in relation to share sales and payments made after 28 June 2021 (the date the freezing order was served on Mr Papas): Murray 30 Sept at [54]; CMM-14 p400. No substantive response has been received to this letter: Murray 30 Sept at [55]-[56]; Murray 19 Oct at [40].
31. That there exists a danger that a judgment would go unsatisfied if the freezing order is not made against Palante can be inferred from at least the following matters.
32. *First*, the evidence establishes that there has been a long running and elaborate fraud: see *Westpac v Forum* at [10]. Mr Papas, a primary perpetrator of that fraud, is the sole director of Palante. Mr Papas is no longer in Australia, and despite representations through his solicitor that he intended to return to Australia to defend this proceeding, he

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<sup>37</sup> See further at Annexure A to these submissions.

has not done so.<sup>38</sup> He has also not complied with the Court's orders to file a defence, and no explanation of the evidence against him has been provided.

33. *Second*, there is evidence of transactions occurring on the Macrovue Account after the commencement of the proceeding. The trade report produced by Macrovue in response to the subpoena shows that from 28 June 2021 to 8 July 2021 shares have been sold: Murray 30 Sept at [50]; CMM-14 p337 at 348; p353 at 355-356. Some sales took place after 28 June 2021: CMM-14 at p356 and 366. More critically, there is evidence of payments from that account, at Mr Papas' direction, after the freezing order was served. A cash transfer report produced by Macrovue shows money being withdrawn from the Macrovue Account on 24, 27 and 29 June 2021, and on 4 and 7 July 2021: CMM-14 p421. The evidence also shows:
- a. two withdrawals, totaling \$350,000, from the Macrovue Account were approved on 23 June 2021. Those payments were made to an account ending 4432. That account is an account held by Mr Papas: Murray 19 Oct at [37], CMM-16 p205, and the statements for that account record receipts which correspond with these payments (CMM-14 p422);
  - b. a payment, approved on 25 June 2021, in the amount of \$200,000 was made to the same account. The bank statement for that account records a receipt which corresponds with this payment: CMM-16 p205;
  - c. a payment of \$200,000 was approved on 28 June 2021 at 5:30pm, which payment was paid to an account with an identified BSB and account number ending 2583. The bank statement for that account, held by Palante, for the period 1 April 2021 to 30 June 2021 records receipt of a payment in the amount of \$200,000 with a description "Macrovue" on 29 June 2021: CMM-14 p286 at p287;
  - d. the same statement shows substantial payments made from that account in the days before it was frozen by the freezing orders;
  - e. two further payments out of the Macrovue Account, in the total amount of \$720,000, were made in July 2021 and paid to an account in the name

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<sup>38</sup> The explanation provided being that Mr Papas does not have the funds for the ticket from Greece and there being "an issue" with the restrictions on people being allowed to enter Australia: Transcript 22.09.2021 p14 ln 14-21: CMM-16 p70.

“E Constantinidis”: CMM-14 p422. Bank statements for this account show receipts into that account that correspond with those payments: Murray 19 Oct at [39], CMM-16 p207-212;

- f. by letter dated 23 September 2021, MinterEllison wrote to Mr Constantinidis seeking an explanation as to the location of the funds paid out of the Macrovue Account: Murray Contempt at [5]; Annexure A. On 15 October 2021, a response was received from Mr Constantinidis’ lawyers which asserted (Murray Contempt at [7], Annexure B):
  - i. that on 30 June 2021, following a request from Mr Papas, Mr Constantinidis paid an amount of \$90,000 to Panetta Lawyers and a further amount of \$60,000 to Fortis Law: response [10]. The amount of \$150,000 received on 2 July 2021 with the description “Macrovue Macrovue” was in reimbursement of these payments: response [11]. Of course, those amounts were in excess of amounts permitted to be paid towards legal fees; and
  - ii. that of the \$520,000 received on 8 July 2021, \$100,000 was paid on Mr Papas’ request to Panetta Lawyers (also in excess of the permitted amount): response [13a], with the balance being kept in “partial repayment of amounts owing by Mr Papas / his companies”: response [13b].<sup>39</sup>

34. *Third*, the payments received by Palante from the Macrovue Account have, in part, been paid out of that account, with the Palante account statement showing two payments, one of \$30,000 and one of \$35,000, transferred out of the Palante account on 29 June 2021: CMM-14 p286 at 287.

35. *Fourth*, despite the ancillary order for an affidavit or assets Mr Papas has not provided complete evidence as to the assets held by Palante. Mr Papas disclosed his interest in Palante and swore that he was unable to estimate the value those shares because he did “currently have access to the accounts of that company”.<sup>40</sup> The affidavit did not disclose

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<sup>39</sup> For the avoidance of doubt, the applicants do not accept the assertion that these payments were made in partial repayment of a loan, nor do the applicants accept the existence of any such loan.

<sup>40</sup> Papas affidavit as to assets sworn 29 July 2021: CMM-16 p63

the existence of the Macrovue Account or the payments received and made shortly prior to the affidavit being sworn.

36. Having regard to the evidence summarised above, there is a risk of dissipation and a risk that judgment will go unsatisfied if the freezing orders are not made. The only matter pointing against that inference is the freezing order in relation to Mr Papas' assets. But Mr Papas *prima facie* has been willing to deal with Macrovue's assets in a manner inconsistent with that order.
37. There is no evidence as to any legitimate business that is engaged in by Palante. None was suggested in the affidavit of assets provided by Mr Papas. Having regard to the significant fraud and the quantum of the loss, the balance of convenience lies in favour of the grant of the freezing orders.

#### Conclusion on Palante freezing order

38. There is a real risk that a judgment against Palante will be wholly or partly unsatisfied because assets may continue to be moved, or disposed of, if the freezing orders are not made. There is a compelling (and unanswered) case that Mr Papas, the sole director of Palante, has acted dishonestly and there is a real prospect Mr Papas may do so again to defeat a judgment. This concern is accentuated by the evidence of transactions on the Macrovue Account and from Palante's account after the proceedings were commenced. The freezing orders sought against Palante should be made.

#### Freezing order against Tesoriero FO Companies

39. As set out above, the FGFS accounting records show payments to each of the Tesoriero FO Companies.
40. *286 Carlisle*: The FGFS Xero records show payments to 286 Carlisle in the amount of \$2,405,000: CMM-14 p94. This amount accords with payments from the FGFS bank account to an account in the name 286 Carlisle as shown on the NAB trace report: Murray 30 Sept at [24], CMM-14 p113. Further, these payments accord with receipts into the 286 Carlisle account (and which payments appear to be the significant source of funds received into this account): CMM-14 p114-120. An annotated version of the Xero worksheet for the 286 Carlisle transactions with evidence reference for the payments is at **Annexure C** to these submissions. Of the funds which have been received by 286 Carlisle, at least \$158,000 has been paid to an account in Greece: Murray 30 Sept at [26], CMM-14 p122-123. Other payments on the 286 Carlisle account

statement appear to be payments to overseas accounts: Murray 30 Sept at [26] and CMM-14 p122.

41. *TIG*: the FGFS Xero records evidence payments from FGFS to TIG in the amount of \$1,159,393.34: see Murray 30 Sept at [29] and CMM-14 p136. Included in the recorded transactions is a “manual journal” entry in the amount of \$950,000 to “JAF Nominees”. JAF Nominees claimed to hold an unregistered second ranking mortgage over 23 Margaret Street Rozelle, Murray 30 Sept at [30]. Additional payments from another account within the Forum Group in the amount of \$250,000 to TIG have been identified: Murray 30 Sept at [30]; CMM-14 p169.
42. *Natalia Ave*: Natalia Ave is recorded as receiving the amount of \$2,122,155.38 from FGFS: Murray 30 Sept at [32]. An annotated version of the Xero worksheet for the Natalia Ave transactions with evidence reference for the payments is at **Annexure D** to these submissions. The amounts, including the amount of \$1,172,000 which was paid as a deposit on a property at 8-10 Natalia Ave Oakleigh (**Oakleigh Property**), relate to the Oakleigh property which Mr Tesoriero had contracted to buy but on-sold the benefit of the contract: Murray 30 Sept at [38]; CMM-14 p210-211.
43. As to the risk of dissipation, a court can grant a freezing order although the “risk of dissipation of the assets is less probable than not”: *Deputy Commissioner of Taxation v Hua Wang Bank* [2010] FCA 1014 (2010) 273 ALR 194 at [9] per Kenny J referring to *Patterson v BTR Engineering (Aust) Ltd* (1989) 18 NSWLR 319 at 325 (Gleeson CJ); which in turn was followed in *Severstal Export GmbH v Bhushan Steel Ltd* [2013] NSWCA 102; 84 NSWLR 141 at 156-158 (Bathurst CJ, Beazley P and Barrett JA agreeing). A sufficient risk of dissipation in relation to the Tesoriero FO Companies is to be inferred from the following.
44. *First*, the conduct of Mr Tesoriero. He and his companies have received very large sums of money which can be identified as money fraudulent obtained from the applicants. He has provided no explanation (let alone an honest explanation) for the receipt and is presently in default of the Court’s orders to file a defence. Mr Tesoriero was a director of Forum Finance (even on his version, for a period while it was perpetrating the fraud on Westpac) when it received and then paid away to FGFS (of which he was also a director for part of the relevant time) funds fraudulently obtained from Westpac. There is a *prima facie* an unanswered case that Mr Tesoriero was a participant in the fraudulent scheme. Further, although Mr Tesoriero disclosed his shareholding in each of the

Tesoriero FO Companies,<sup>41</sup> the value of the shares was described as being nominal and he did not adequately and promptly disclose his interest in the Oakleigh Property in the affidavit of assets: Murray 30 Sept at [68]; CMM-14 p208; CMM-10 p227, p624.

45. *Second*, in the case of 286 Carlisle and Natalia Ave, despite receiving funds into their respective accounts from FGFS those accounts, as at 30 June 2021, no longer held majority of the funds received: see CMM-14 p177-120 (286 Carlisle) and p206 (Natalia Ave). In the case of 286 Carlisle, payments have been made from that account to Greece, and there is at least a *prima facie* inference that 286 Carlisle was a conduit to pay money out of the country as part of the fraudulent scheme: Murray 30 Sept at [26]. Neither entity appears to operate any lawful business or to have generated any income other than the payments from FGFS. No evidence is given in Mr Tesoriero's affidavit of assets as to any lawful business of the Tesoriero FO Companies.
46. *Third*, although Mr Tesoriero has provided a subsequent affidavit which disclosed his interest in the motor yacht the "XOXO",<sup>42</sup> no assets in Greece or other assets offshore have been disclosed. In this respect, no explanation has been provided for the transfers of funds from 286 Carlisle.
47. In the circumstances there is a sufficient risk that if the freezing orders are not made that Mr Tesoriero will take steps to dissipate assets held by the Tesoriero FO Companies or cause those companies to reduce any assets which may be available to satisfy a judgment against them in favour of the applicants. Further, as none of the entities appears to carry on any known business, the balance of convenience favours the grant of the freezing orders against the Tesoriero FO Companies.

### **Contempt Application**

48. The next matter concerns the interlocutory application dated 23 September 2021 seeking to punish Mr Papas for contempt of court (**Contempt Application**). The present question is one of bringing Mr Papas before the Court. There are two options, which may be cumulative or alternative. *First*, an order for substituted service could be made. *Second*, a warrant could be issued for the arrest of Mr Papas to bring him before the Court to answer the charge.

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<sup>41</sup> Tesoriero affidavit as to assets affirmed 21 July 2021: CMM-16 p79

<sup>42</sup> Tesoriero further affidavit as to assets: CMM-16 p99



### Substituted Service

49. Service of the Contempt Application is provided for in rule 42.13 of the *Federal Court Rules 2011* (Cth) (**Rules**), which requires the application, statement of charge and affidavits on which the party making the charge intends to rely to be personally served. However, it has been accepted, in the context of contempt charges, the Court can make an order for substituted service: *Doyle v Commonwealth* (1985) 156 CLR 510 at 517; *Lazar v Taito (Australia) Pty Ltd* (1985) 5 FCR 395 at 413-414. The High Court in *Doyle* held that when all reasonable efforts to effect personal service have been made and failed, the Court can and ought to make an order for substituted service.
50. Rule 1.34 allows the Court to dispense with compliance with any of the rules and Rule 10.24 provides for substituted service if it is not practicable to serve a document in a way required by the Rules. Division 10.4 allows service outside of Australia. Relevantly Rule 10.44 addresses service of documents other than an originating process outside of Australia (which requires leave) and Rule 10.49 allows for a party to seek an order for substituted service where service was not successful in the foreign country in the manner specified in the rules.
51. In *Commissioner of Taxation v Zeitouni* [2013] FCA 1011; 306 ALR 603 at [66]–[71] Katzmann J considered the various authorities in relation to the meaning of “not practicable”, the threshold being less than impossible or futile but more than mere inconvenience. In that case the respondents were located overseas in circumstances where their address was not known. In *Zeitouni*, the Court was asked to set aside orders for substituted service which had been made in the proceeding where the applicant had not first sought leave to serve the originating documents overseas. The application was rejected. Katzmann J held at [60] that an application for substituted service on a person overseas could be made under either Rule 10.24 or 10.49 and it was unnecessary to prove that attempts had been made to serve the person in the foreign country before an application for substituted service could be made.

### Proposed service on Mr Papas

52. Mr Papas no longer has a solicitor on the record. His former solicitor filed a notice of ceasing to act on 27 September 2021 that gave Mr Papas’ last known residential or business address as 23 Margaret St, Rozelle: Murray 19 Oct at [9]; CMM-16 p14.

However, it is common ground that Mr Papas is outside Australia. In contravention of the rules Mr Papas has not provided an address for service in Australia.

53. When Mr Papas swore his affidavits on 29 July 2021, he was in Greece.<sup>43</sup> He left Australia in circumstances in which the fraud was being uncovered. His recent conduct allows, indeed compels, inferences that (a) he is deliberately not participating in the proceedings, including not filing a defence; and (b) he is seeking to avoid the consequences of his conduct including having left the jurisdiction, disconnected an email address previously used to communicate with him and provided no ready means for service. In the circumstances, it is not practicable to effect personal service of the documents on Mr Papas.
54. The applicants propose to serve the Contempt Application on Mr Papas in the following manner:
  - a. by delivering them, by email and hard copy to the addresses which are specified in the Notice of Address for Service: this is the physical premises and the office email address for the firm of his former solicitor, Panetta Lawyers;
  - b. by sending by text a link to an electronic folder containing the relevant documents with a message notifying Mr Papas of the nature of the documents to the “Greek phone number” for Mr Papas, which has been provided to the Court as the phone number of which Mr Panetta was communicating with Mr Papas; and
  - c. by emailing an email address which has been identified as being used by Ms Louise Agostino and requesting that she draw Mr Papas’ attention to the link for the electronic folder with the documents.
55. As to service on Panetta Lawyers, by Notice of Address for Service filed on 1 July 2021 Mr Papas nominated as his address for service in the proceeding the physical and email address for Panetta Lawyers: Murray 19 Oct at [1], CMM-16 p2. No updated notice of address for service has been filed by Mr Papas, in contravention of the rules.
56. As to the “Greek number”, Mr Papas’ former lawyer gave evidence that this was the number on which he has been communicating with Mr Papas: Panetta Affidavit, Transcript 6 October 2021 p13 ln1-6. Attempts have been made to communicate with Mr Papas using that number, with no response but also with no suggestion that text

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<sup>43</sup> See at CMM-16 p60, p63 and p68

messages sent from a mobile telephone to that number went un-delivered: Murray 19 Oct at [14] and [41]: CMM-16 p25 and p213.

57. As to the email address for Ms Agostino, Ms Agostino is Mr Papas' partner and is currently residing with him in Greece. Records produced by the Department of Home Affairs show that Mr Papas and Ms Agostino nominated the same residential address in their respective travel exemption applications to travel outside of Australia: Murray 19 Oct at [19a] and [19g], CMM-16 p36 and p52. That address was 23 Margaret St, Rozelle. Ms Agostino's travel exemption request made on 8 July 2021, indicated she was seeking to travel to Greece: CMM-16 p47, p48. Department of Home Affairs movement records for Ms Agostino show she left Australia on 15 July 2021: Murray 19 Oct at [19f], CMM-16 p51. In an affidavit sworn on 29 July 2021, Mr Papas indicated his partner had recently arrived in Greece to stay with him. Mr Panetta has described Ms Agostino as Mr Papas' girlfriend: CMM-16 at p60 (see para [7]). Photographs published in various newspapers appear to show Mr Agostino with Mr Papas in Greece: Murray 19 Oct at [18]; CMM-16 p29. The evidence demonstrates that Ms Agostino is Mr Papas' partner and is currently residing with him in Greece. The email address proposed to be used by the applicants is the email address to which the Department of Home Affairs emailed the outcome of Ms Agostino's travel exemption request: CMM-16 p49. That email was sent on 13 July 2021, two days prior to Ms Agostino's departure from Australia. It is the most current known email address for Ms Agostino and one which was recently used for important communications.

#### *Warrant for Mr Papas' arrest*

58. By s 31 of the *Federal Court of Australia Act 1976 (Cth) (FCA Act)*, the Federal Court of Australia has the same power "*to punish contempts of its power and authority as is possessed by the High Court in contempts of the High Court*". Contempt is addressed in Part 42 of the Rules, and in accordance with Rule 42.11(1) an interlocutory application has been filed: CB tab 12. A statement of charge, as required by Rule 42.12, has also been filed: CB tab 14. The statement of charges specifies the contempt alleged against Mr Papas. That contempt arises from the facts which are set out earlier in these submissions concerning payments out of the Macrovue Account in the period after 28 June 2021. In short, the allegation is that Mr Papas has disobeyed the freezing orders made against him and his property in causing Macrovue to make payments from the Macrovue Account to Mr Eric Constantinidis in the total amount of \$720,000, after the

order was served, in the period from 1 to 6 July 2021. The response (the letter from Mr Constantinidis' solicitors to which reference has already been made) tends to further evidence the contempt.

59. By Rule 42.14 the Court is empowered to issue a warrant for the arrest of Mr Papas if certain criteria are met.
60. There can be no issue as to satisfaction of rule 42.14(1) – an application for punishment of a contempt has been filed. The applicants are the party making the charge and the applicants now apply for a warrant to issue for the arrest and detention of Mr Papas until he can be brought before the Court in accordance with Rule 42.14(1)(b).
61. Rule 42.14(2) was considered by the Full Federal Court in *Mensink v Parbery* [2018] FCAFC 101; 264 FCR 265. The question there addressed was whether the rule was satisfied when a person had already left (in the language of the rule, withdrawn or absconded from) the jurisdiction. The rule is expressed as requiring the party making the charge to satisfy the Court that the person charged is likely to abscond or otherwise withdraw from the jurisdiction of the Court. In *Mensink*, the appellant argued that the trial judge erred because the person charged had already left the jurisdiction. This argument was rejected.
62. At [92]-[98] Wigney J, after referring to the authorities as to the meaning of *abscond* found that the rule should be “*construed beneficially so as to permit the issue of a warrant in circumstances where the person has already left the jurisdiction and has evinced an intention not to return in the near future*”: see at [94]. Bromwich J, with whom Besanko J agreed at [1], held at [189]-[190]:

*It would make a nonsense of r 42.14(2) if it could not be shown that someone was likely to withdraw from the jurisdiction because he had already done so. It is not to the point that an intention to return is stated to take place many months later, especially as no clear or firm date was indicated.*

*While r 42.14(2) does contain a mandatory consideration, it is overly technical to suggest that the primary judge was required to engage in some kind of checklist process to address matters that could not seriously be in dispute.*

63. *Mensink* has subsequently been applied by O'Bryan J in *Polis v Zobor (No 4)* [2019] FCA 2101 at [21]-[22].

64. Mr Papas is presently in Greece and has been since mid to late June 2021.<sup>44</sup> Although initially indicating, through his solicitor and counsel, an intention to return to Australia “to attend to [the] serious allegations against him personally”<sup>45</sup> Mr Papas has not done so. The explanation provided by Mr Papas, through his then solicitor, as to the delay in his return is that Mr Papas does not have the money to buy the ticket from Greece and due to the restrictions on people being allowed to enter Australia.<sup>46</sup> Information on instructions from Mr Papas is not creditable. Also, the story as to a lack of funds is not creditable. Mr Papas’ expenditure on luxury items and hotels shortly after leaving Australia demonstrates he had sufficient money to return to Australia if he chose to do so: Murray 19 Oct at [22], CMM-16 p71-76.
65. Further, despite being obliged to do so on his solicitor filing a notice of ceasing to act, Mr Papas has not filed any updated notice of address for service. No steps have been taken by Mr Papas to ensure the applicants can contact him in relation to this proceeding. That evidences an intention to avoid service or engagement with these proceedings. In the circumstances, Mr Papas has withdrawn from the jurisdiction and evinced an intention not to return in the near future.
66. The applicants, having demonstrated that Mr Papas has withdrawn from the jurisdiction for the purposes of Rule 42.14(2), seek that the Court issue a warrant for his arrest.

### **Winding up applications**

67. The next matter for determination concerns the external administration of FGFS, Forum Enviro Pty Ltd (provisional liquidators appointed) (**FE**) and Forum Enviro (Aust) Pty Ltd (provisional liquidators appointed) (**FEA**), respectively the fourth, sixth and seventh respondents. Messrs Preston and Ireland (**Provisional Liquidators**) are appointed as the joint and several provisional liquidators of FGFS, FE and FEA.
68. The applicants seek orders that FGFS, FE and FEA be wound up on the basis that each is insolvent and on the just and equitable grounds, with the Provisional Liquidators to be appointed as liquidators. In relation to these orders, the affidavit of Mr Ireland affirmed 29 September 2021, and Exhibit JI-2 to that affidavit is relied upon. The applicants also refer to and repeat paragraphs [31]-[42] of their submissions dated

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<sup>44</sup> Transcript, 7 July 2021, p16 ln 31-35.

<sup>45</sup> Transcript, 7 July 2021, p17 ln 7-10.

<sup>46</sup> Transcript, 22 September 2021, p14 ln 14-21.

1 October 2021. The extract of the submissions, the affidavit and exhibit are at tabs 17-19 of the court book prepared.

### **Timetabling case management orders**

69. The applicants accept that these proceedings have reached a point where it is necessary to progress the litigation towards trial without all identified recipients of the fraudulently obtained money or all possible respondents joined to the proceeding. Certain individuals and additional entities, that have been identified, are likely to be joined. The applicants propose to further amend the originating application and statement of claim to join those further respondents and are anticipated to be in a position to do so within two weeks (5 November 2021). It may be necessary to seek a further grant of leave to serve the amended pleadings outside of Australia.
70. However, there are more complex claims the underlying facts of which are still being investigated. It ultimately may be necessary to commence further proceedings in relation to those claims. The applicants recognise that has the difficulty that the fraudulent conduct will need to be proved again in those proceedings. While duplication is to be avoided where possible, the applicants accept these proceedings need to be progressed with the risk of litigating some of the same issues in subsequent proceedings.
71. The applicants propose the orders set out in the short minutes contained in the court book.

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19 October 2021  
Counsel for the applicants

### Annexure A: Annotated Xero Records - Palante

<b>Loan - Palante Pty Ltd Transactions</b>						
Forum Group Financial Services Pty Ltd						
For the period 1 July 2010 to 30 June 2021						
Date	Source	Description	Debit (AUD)	FGFS bank statement	Palante bank statement	Macrovue documents
<b>Loan - Palante Pty Ltd</b>						
<b>Opening Balance</b>			<b>0.00</b>			
22 Feb 2019	Spend Money	Palante - Internet Transfer PYMT-ID 132835257 Bill Papas TRANSFER DEBIT	70,000.00		CMM-14 p266	
10 May 2019	Spend Money	Palante Pty Ltd - INTERNET BPAY PMT 000137378944 ASIC TRANSFER DEBIT	255.00			
10 May 2019	Spend Money	Palante - Internet Transfer PYMT-ID 137498932 Bill Papas Funds TRANSFER DEBIT	50,000.00		CMM-14 p268	
27 Jun 2019	Spend Money	Palante Pty Ltd - Loan to Palante - Transfer of funds into client investment account at Macrovue Pty Ltd	150,000.00			
10 Jul 2019	Spend Money	Palante Pty Ltd - Loan to Palante - Transfer of funds into client investment account at Macrovue Pty Ltd	200,000.00	CMM-14 p229		
25 Jul 2019	Spend Money	Palante Pty Ltd - Loan to Palante - Transfer of funds into client investment account at Macrovue Pty Ltd - REF: DFMJ8EG5	200,000.00	CMM-14 p230		
13 Sep 2019	Spend Money	Palante Pty Ltd - Loan to Palante - Bill Papas	150,000.00	CMM-14 p232	CMM-14 p 270	
14 Nov 2019	Spend Money	Palante Pty Ltd - Internet Transfer PYMT-ID 149050429 Palante TRANSFER DEBIT	330.00	CMM-14 p234		
28 Feb 2020	Spend Money	Palante Pty Ltd - Loan to Palante for ASIC Annual Review	267.00	CMM-14 p237		
11 Mar 2020	Spend Money	Palante Pty Ltd - Internet Transfer PYMT-ID 156117734 Rothsay 514533 TRANSFER DEBIT	330.00	CMM-14 p239		
28 Apr 2020	Spend Money	Palante Pty Ltd - Loan to Palante - Transfer of funds into client investment account at Macrovue Pty Ltd	100,000.00	CMM-14 p241		CMM-14 p422
02 Jun 2020	Spend Money	Palante Pty Ltd - Internet Transfer PYMT-ID 160874607 Rothsay Palante	5,500.00	CMM-14 p245		
11 Aug 2020	Spend Money	Rothsay - Palante - 516067	440.00			
29 Sep 2020	Spend Money	OncoTEX - INTERNET TRANSFER PMT 000168070008 ONCOTEX PALANT	500,000.00	CMM-14 p 250		
30 Sep 2020	Manual Journal	Loan Interest - QE Sep20 - Palante Loan Interest - QE Sep20	35,678.05			
01 Jan 2021	Manual Journal	Loan Interest - QE Dec20 - Palante Loan Interest - QE Dec20	36,570.00			
27 Jan 2021	Spend Money	Palante Pty Ltd - Macrovue BP	200,000.00	CMM-14 p252		CMM-14 p421
29 Jan 2021	Spend Money	Palante Pty Ltd - Internet Transfer PYMT-ID 175442258 Bill Papas - Macro	150,000.00	CMM-14 p252		CMM-14 p421
02 Feb 2021	Spend Money	Bill Papas - Range Rover Vw Payment	17,087.30			
12 Feb 2021	Spend Money	Palante Pty Ltd - Loan to Palante for TAX OFFICE PAYMENTS - ITR	102,203.61	CMM-14 p254		
12 Feb 2021	Spend Money	Palante Pty Ltd - Loan to Palante for TAX OFFICE PAYMENTS - BAS	338,732.76	CMM-14 p254		
15 Feb 2021	Spend Money	Palante Pty Ltd - Internet Transfer PYMT-ID 176427720 Macrovue BP	150,000.00	CMM-14 p254		CMM-14 p421
10 Mar 2021	Spend Money	Rothsay - Internet Transfer PYMT-ID 177952353 Palante	330.00	CMM-14 p256		
31 Mar 2021	Spend Money	Moto 1 Garage - Internet Transfer PYMT-ID 179333533 GT 500 Deposit	100,000.00	CMM-14 p255		
31 Mar 2021	Manual Journal	Loan Interest - QE Mar21 - Palante Loan Interest - QE Mar21	63,943.09			
08 Apr 2021	Spend Money	Palante Pty Ltd - INTERNET BPAY PMT 000179735539 ASIC	273.00	CMM-14 p229		
<b>Total Loan - Palante Pty Ltd</b>			<b>2,621,939.81</b>			
<b>Closing Balance</b>			<b>2,621,939.81</b>			
Total			2,621,939.81			

### Annexure B: Additional Payments to Palante

Payments for Palante											
	Date	Currency	Transaction Amount	Beneficiary BSB	Beneficiary Account	Transaction Account Name	Transaction Reference	Remitter BSB	Remitter Account	FGFS bank statement	Palante bank statement
153951018	6/02/2020	AUD	35,000.00	082-080	835042583	Palante	FGFS Int Jan20	082-080	271058642	CMM-14 p236	CMM-14 p276
155475973	2/03/2020	AUD	35,000.00	082-080	835042583	Palante	FGFS Feb20 1001	082-080	271058642	CMM-14 p238	CMM-14 p276
157438851	2/04/2020	AUD	35,000.00	082-080	835042583	Palante	Interest 1002	082-080	271058642	CMM-14 p240	CMM-14 p278
159117281	1/05/2020	AUD	35,000.00	082-080	835042583	Palante	FGFS Inv 1003	082-080	271058642	CMM-14 p243	CMM-14 p278
160585718	28/05/2020	AUD	35,000.00	082-080	835042583	Palante	FGFS Inv 1004	082-080	271058642	CMM-14 p244	CMM-14 p278
163050178	8/07/2020	AUD	35,000.00	082-080	835042583	Palante	FGFS Inv 1005	082-080	271058642	CMM-14 p247	CMM-14 p280
164640495	3/08/2020	AUD	35,000.00	082-080	835042583	Palante	FGFS Inv 1006	082-080	271058642	CMM-14 p248	CMM-14 p280

FGFS funds not recorded in Xero

245,000.00



**Annexure C: Annotated Xero Records – 286 Carlisle**

## Loan - 286 Carlisle Street Pty Ltd Transactions

Forum Group Financial Services Pty Ltd  
For the period 1 July 2010 to 5 August 2021

Date	Source	Description	Debit (AUD)	FGFS bank statement	286 Carlisle bank stmt
<b>Loan - 286 Carlisle Street Pty Ltd</b>					
<b>Opening Balance</b>			<b>0.00</b>		
26 Feb 2021	Spend Money	286 Carlisle St - Internet Transfer PYMT-ID 177170301 Loan to 286 Carl	100,000.00	CMM-14 p96	CMM-14 p114
05 Mar 2021	Spend Money	286 Carlisle St - Internet Transfer PYMT-ID 177680022 Loan to 286 Carl	120,000.00	CMM-14 p101	CMM-14 p114
11 Mar 2021	Spend Money	286 Carlisle St - Internet Transfer PYMT-ID 178045410 Loan to 286 Carl	120,000.00	CMM-14 p100	CMM-14 p114
18 Mar 2021	Spend Money	286 Carlisle St - Internet Transfer PYMT-ID 178506459 Loan to 286 Carl	155,000.00	CMM-14 p99	CMM-14 p114
23 Mar 2021	Spend Money	286 Carlisle St - Internet Transfer PYMT-ID 178758635 Loan to 286 Carl	160,000.00	CMM-14 p99	CMM-14 p114
29 Mar 2021	Spend Money	286 Carlisle St - Internet Transfer PYMT-ID 179106372 Loan to 286 Carl	150,000.00	CMM-14 p98	CMM-14 p114
30 Mar 2021	Spend Money	286 Carlisle St - Internet Transfer PYMT-ID 179207170 Loan to Carlisle	10,000.00	CMM-14 p97	CMM-14 p114
06 Apr 2021	Spend Money	286 Carlisle St - Internet Transfer PYMT-ID 179525432 Loan to 286 Carl	160,000.00	CMM-14 p102	CMM-14 p116
09 Apr 2021	Payable Payment	Payment: The Porschaden Classic Pty Ltd	0.00		
13 Apr 2021	Spend Money	286 Carlisle St - Internet Transfer PYMT-ID 179978655 Loan to 286 Carl	165,000.00	CMM-14 p103	CMM-14 p116
20 Apr 2021	Spend Money	286 Carlisle St - Internet Transfer PYMT-ID 180469027 Loan to 286 Carl	140,000.00	CMM-14 p104	CMM-14 p116
27 Apr 2021	Spend Money	286 Carlisle St - Internet Transfer PYMT-ID 180842062 Loan to 286 Carl	155,000.00	CMM-14 p105	CMM-14 p116
29 Apr 2021	Spend Money	286 Carlisle St - Internet Transfer PYMT-ID 180956405 Loan to Carlisle	5,000.00	CMM-14 p105	CMM-14 p116
04 May 2021	Spend Money	286 Carlisle St - Internet Transfer PYMT-ID 181354851 Loan to 286 Carl	165,000.00	CMM-14 p106	CMM-14 p116
12 May 2021	Spend Money	286 Carlisle St - Internet Transfer PYMT-ID 181917290 Loan to 286 Carl	160,000.00	CMM-14 p107	CMM-14 p116
19 May 2021	Spend Money	286 Carlisle St - Internet Transfer PYMT-ID 182364313 Loan to 286 Carl	160,000.00	CMM-14 p108	CMM-14 p116
25 May 2021	Spend Money	286 Carlisle St - Internet Transfer PYMT-ID 182719452 Loan to 286 Carl	130,000.00	CMM-14 p109	CMM-14 p117
02 Jun 2021	Spend Money	286 Carlisle St - Internet Transfer PYMT-ID 183327426 Loan to 286 Carl	170,000.00	CMM-14 p111	CMM-14 p117
11 Jun 2021	Spend Money	286 Carlisle St - Internet Transfer PYMT-ID 184019421 Loan to 286 Carlis	20,000.00	CMM-14 p112	CMM-14 p117
15 Jun 2021	Spend Money	286 Carlisle St - Internet Transfer PYMT-ID 184142554 Loan to 286 Carlis	160,000.00	CMM-14 p112	CMM-14 p117
<b>Total Loan - 286 Carlisle Street Pty Ltd</b>			<b>2,405,000.00</b>		
<b>Closing Balance</b>			<b>2,202,000.00</b>		
Total			2,405,000.00		

### Annexure D: Annotated Xero Records – Natalia Ave

<b>Loan - 8-12 Natalia Ave Oakleigh Pty Ltd Transactions</b>					
Forum Group Financial Services Pty Ltd					
For the period 1 July 2010 to 5 August 2021					
Date	Source	Description	Debit (AUD)	FGFS bank statement	Natalia bank statement
<b>Loan - 8-12 Natalia Ave Oakleigh Pty Ltd</b>					
<b>Opening Balance</b>			<b>0.00</b>		
19 Dec 2019	Spend Money	12 Natalia - Deposit for 12 Natalia	586,000.00	CMM-14 p183	
28 Feb 2020	Payable Invoice	Metier3 Pty Ltd - Works completed since commencement to 28 Feb 20 - 8-12 Natalia Avenue, Oakleigh South	10,173.75		
15 Apr 2020	Payable Invoice	Contour Consultants Aust Pty Ltd - Services provided to 31 March 2020 at 8-12 Natalia Avenue	2,041.25		
04 May 2020	Payable Invoice	Contour Consultants Aust Pty Ltd - Services provided from 1 April to 30 April 2020 at 8-12 Natalia Avenue	2,328.75		
04 Jun 2020	Payable Invoice	Metier3 Pty Ltd - Works completed 01 March 2020 and 31 May 2020 - 8-12 Natalia Avenue, Oakleigh South (\$48,848.75 total c	38,675.00		
09 Jun 2020	Spend Money	12 Natalia - Natalia Deposit	586,000.00	CMM-14 p185	
09 Jun 2020	Payable Invoice	Leigh Design - Preparation of a waste management plan for development listed at 8-12 Natalia Avenue	1,180.00		
30 Jun 2020	Payable Invoice	Edge Group - Soil Contamination Assessment for Oakleigh South	7,905.00		
30 Jun 2020	Payable Invoice	WRAP Engineering Pty Ltd - Phase 1: Town Planning/Concept Design - 8-12 Natalia Avenue	2,400.00		
01 Aug 2020	Payable Invoice	Metier3 Pty Ltd - Works completed 01 June 2020 and 30 June 2020 - 8-12 Natalia Avenue, Oakleigh South (\$91,576.25 total cl	42,727.50		
03 Aug 2020	Payable Invoice	Mitchell Brandtman - Professional fees for Quantity Surveying Services - 8-12 Natalia Avenue	7,000.00		
04 Aug 2020	Spend Money	12 Natalia - Internet Transfer PYMT-ID 164670895 Natalia Payment	200,000.00	CMM-14 p187	
18 Aug 2020	Payable Invoice	Metier3 Pty Ltd - Works completed 01 July 2020 and 31 July 2020 - 8-12 Natalia Avenue, Oakleigh South (\$105,621.25 total clai	14,045.00		
19 Aug 2020	Payable Invoice	Nobelius - Title Re-Establishment and Feature & Level Survey and preparation of the plan for 8-12 Natalia Avenue	3,800.00		
16 Sep 2020	Spend Money	12 Natalia - Loan to 8-12 Natalia for Charter Keck Cramer 01244482	16,500.00	CMM-14 p189	
29 Sep 2020	Receivable Payment	Payment: 8-12 Natalia Avenue Oakleigh Pty Ltd	11,000.00		
29 Sep 2020	Spend Money	PEOPL Group - Internet Transfer PYMT-ID 168021435 Peopl Group 1211	1,650.00		
27 Oct 2020	Receivable Payment	Payment: 8-12 Natalia Avenue Oakleigh Pty Ltd	10,657.63		
29 Oct 2020	Spend Money	8-12 Natalia Avenue Oakleigh Pty Ltd - Internet Transfer PYMT-ID 163904516 Loan to Natalia	1,000.00	CMM-14 p192	CMM-14 p200
01 Nov 2020	Manual Journal	Loan Interest - QE Sep20 - Natalia Loan Interest - QE Sep20	38,335.66		
16 Nov 2020	Receivable Payment	Payment: 8-12 Natalia Avenue Oakleigh Pty Ltd	6,127.00		
16 Nov 2020	Receivable Payment	Payment: 8-12 Natalia Avenue Oakleigh Pty Ltd	4,214.02		
16 Nov 2020	Receivable Payment	Payment: 8-12 Natalia Avenue Oakleigh Pty Ltd	2,640.00		
16 Nov 2020	Receivable Payment	Payment: 8-12 Natalia Avenue Oakleigh Pty Ltd	3,773.00		
16 Nov 2020	Receivable Payment	Payment: 8-12 Natalia Avenue Oakleigh Pty Ltd	2,205.50		
26 Nov 2020	Receivable Payment	Payment: 8-12 Natalia Avenue Oakleigh Pty Ltd	27,000.88		
31 Dec 2020	Receivable Payment	Payment: 8-12 Natalia Avenue Oakleigh Pty Ltd	18,506.13		

31 Dec 2020	Receivable Payment	Payment: 8-12 Natalia Avenue Oakleigh Pty Ltd	45,263.63		
31 Dec 2020	Receivable Payment	Payment: 8-12 Natalia Avenue Oakleigh Pty Ltd	24,018.50		
31 Dec 2020	Receivable Payment	Payment: 8-12 Natalia Avenue Oakleigh Pty Ltd	22,000.00		
31 Dec 2020	Receivable Payment	Payment: 8-12 Natalia Avenue Oakleigh Pty Ltd	7,150.00		
31 Dec 2020	Receivable Payment	Payment: 8-12 Natalia Avenue Oakleigh Pty Ltd	7,316.06		
31 Dec 2020	Receivable Payment	Payment: 8-12 Natalia Avenue Oakleigh Pty Ltd	45,263.63		
31 Dec 2020	Receivable Payment	Payment: 8-12 Natalia Avenue Oakleigh Pty Ltd	22,000.00		
31 Dec 2020	Receivable Payment	Payment: 8-12 Natalia Avenue Oakleigh Pty Ltd	33,000.00		
01 Jan 2021	Manual Journal	Loan Interest - QE Dec20 - Natalia Loan Interest - QE Sep20	46,347.45		
03 Feb 2021	Spend Money	8-12 Natalia Avenue Oakleigh Pty Ltd - loan to Natalia	10,000.00	CMM-14 p134	CMM-14 p202
03 Feb 2021	Payable Payment	Payment: Contour Consultants Aust Pty Ltd	0.00		
19 Mar 2021	Receivable Payment	Payment: 8-12 Natalia Avenue Oakleigh Pty Ltd	2,502.50		
19 Mar 2021	Receivable Payment	Payment: 8-12 Natalia Avenue Oakleigh Pty Ltd	15,974.75		
19 Mar 2021	Receivable Payment	Payment: 8-12 Natalia Avenue Oakleigh Pty Ltd	42,603.00		
19 Mar 2021	Receivable Payment	Payment: 8-12 Natalia Avenue Oakleigh Pty Ltd	2,750.00		
19 Mar 2021	Receivable Payment	Payment: 8-12 Natalia Avenue Oakleigh Pty Ltd	15,664.00		
19 Mar 2021	Receivable Payment	Payment: 8-12 Natalia Avenue Oakleigh Pty Ltd	330.00		
19 Mar 2021	Receivable Payment	Payment: 8-12 Natalia Avenue Oakleigh Pty Ltd	2,997.50		
19 Mar 2021	Receivable Payment	Payment: 8-12 Natalia Avenue Oakleigh Pty Ltd	15,664.00		
19 Mar 2021	Receivable Payment	Payment: 8-12 Natalia Avenue Oakleigh Pty Ltd	32,914.75		
31 Mar 2021	Manual Journal	Loan Interest - QE Mar21 - Natalia Loan Interest - QE Mar21	50,906.22		
02 Jun 2021	Spend Money	8-12 Natalia Avenue Oakleigh Pty Ltd - Internet Transfer PYMT-ID 183343910 loan to Natalia	35,000.00	CMM-14 p138	CMM-14 p204
<b>Total Loan - 8-12 Natalia Ave Oakleigh Pty Ltd</b>			<b>2,127,552.06</b>		
<b>Closing Balance</b>			<b>2,122,155.18</b>		
Total			2,127,552.06		