

NOTICE OF FILING

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Details of Filing

Document Lodged: Affidavit - Form 59 - Rule 29.02(1)
File Number: NSD616/2021
File Title: WESTPAC BANKING CORPORATION ABN 33 007 457 141 v FORUM
FINANCE PTY LIMITED & ANOR
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF
AUSTRALIA



Sia Lagos

Dated: 2/07/2021 9:53:17 AM AEST

Registrar

Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



Form 59
Rule 29.02(1)

Affidavit

No. NSD616 of 2021

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

WESTPAC BANKING CORPORATION ABN 33 007 457 141

Applicant

FORUM FINANCE PTY LIMITED and another named in the schedule

Respondents

Affidavit of: **Anna Ross**
Address: Level 17, 8 – 12 Chifley Square, Sydney, New South Wales
Occupation: Partner, Corrs Chambers Westgarth
Date: 1 July 2021

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I, Anna Ross Level 17, 8 – 12 Chifley Square, Sydney in the State of New South Wales affirm:

- I am an independent solicitor identified in the orders entered by this Court on 28 June 2021.

3452-1863-5541v1

Filed on behalf of (name & role of party) Independent Solicitor
Prepared by (name of person/lawyer) Anna Ross
Law firm (if applicable) Corrs Chambers Westgarth
Tel +61 2 9210 6904 Fax _____
Email anna.ross@corrs.com.au
Address for service Level 17, 8 – 12 Chifley Square, Sydney, New South Wales
(include state and postcode)

Appointment as independent solicitor

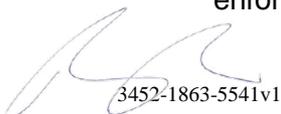
2. On 27 June 2021, I received an email from Caitlin Murray of Minter Ellison seeking to ascertain my availability on 28 June 2021 to act as an independent solicitor with respect to the execution of search orders that would be the subject of an application by the Applicant to this court on 28 June 2021.
3. Under cover of her email of 27 June 2021, Ms Murray provided me with a copy of the undertakings that were required to be given by an independent solicitor overseeing the execution of the search should it be ordered by this court. I confirmed by email sent later on 27 June 2021 to Ms Murray that I consented to the appointment and agreed to be bound by the undertakings.
4. On the morning of 28 June 2021, Ms Murray advised me that it was proposed that I would act as independent solicitor with respect to the execution of search orders at the residence of the Second Respondent, Basile Papadimitriou (hereafter **Bill Papas**) which was located at 23 Margaret Street, Rozelle, NSW (the **Property**).

Attendance at the Premises on 28 June 2021

5. At 12:59 pm on 28 June 2021, I received an email from Anthony Sommer of Minter Ellison under cover of which he provided a copy of sealed orders entered by this court on 28 June 2021 (**Orders**). I carefully reviewed the Orders so far as they concerned search orders with respect to the Property.
6. At 1:13 pm, I received a call from Mr Sommer during which he advised that he and a colleague would shortly be departing the CBD and asking whether I was in a position to meet them at the Property. Further, that Mr Rodney McKemmish, an independent computer expert, was also travelling to meet Mr Sommer at the Property.
7. I confirmed that I was able to immediately travel to the Property and asked Mr Sommer whether it was expected that anyone other than Mr Papas was in residence at the Property. Mr Sommer said that searches had been undertaken to determine whether Mr Papas lived with any family and it was expected he was the sole resident of the Property.
8. At around 1:34 pm I arrived at the Property. Shortly thereafter, Mr Sommer and his colleague Kate Cockburn arrived at the Property. Mr Sommer provided me with a folder containing the sealed orders as well as the following affidavits (with exhibits):
 - (a) affidavit of Geoffrey Keith Anderson sworn on 28 June 2021;
 - (b) affidavit of Nicholas Antony O'Brien sworn on 27 June 2021;
 - (c) first affidavit of Caitlin Maria Murray sworn on 28 June 2021; and

(d) second affidavit of Caitlin Maria Murray sworn on 28 June 2021.

9. I briefly reviewed the contents of the folder to confirm that the Orders that I had reviewed earlier that day were present and that the affidavit material appeared to be complete.
10. After I had reviewed the folder, Mr Sommer telephoned Mr Rodney McKemmish and ascertained he was approximately 10 minutes away. We determined that we would seek to access the Property while awaiting Mr McKemmish's arrival. Prior to approaching the Property, Mr Sommer and Ms Cockburn made clear to me that they would comply with my directions with respect to the execution of the search should it proceed.
11. At 1:45pm, I rang the doorbell of the Property several times with no response. I then knocked on the door several times and on the second occasion heard a female voice saying words to the effect that she would "be there in a moment". The person then approached the door and said words to the effect that she did not have a key and that she would look for one and be back shortly. The front door included glass panels but they were frosted and I could not see the person, nor otherwise identify her.
12. A few minutes later, the same person returned to the door and said that she didn't have a key and couldn't open the door. She asked who I was and why I was at the Property. I provided my name and explained that I understood that the Property was the residence of Mr Bill Papas and that I was an independent solicitor in possession of an order from the Court that authorised myself and a search party to enter the premises and remove certain identified documents and other listed items.
13. The person identified herself as a cleaner engaged by Mr Papas but declined to give her name. She confirmed that the premises was the residence of Mr Papas and further said that she was not a member of the family and that no one from the family was home. She said that she wasn't able to let us into the house as she was "only the cleaner" and didn't feel comfortable doing so. I asked whether she could get in touch with Mr Papas and seek his permission to allow us onto the Property or otherwise ascertain when he would be returning to the Property.
14. The person said that she would try and contact Mr Papas and I provided my contact details and again explained the reason for my attendance at the Property. The person then appeared to move further into the house in order to try to contact Mr Papas. Around 5 minutes later she returned and said she could not get in touch with Mr Papas and had left a message. She asked me to leave my business card (which I did) and said she would ask him to call me.
15. At this point, I had a discussion with Mr Sommer and explained that the orders were enforceable against Mr Papas and a person that in my reasonable view was:



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- His director, officer, partner, employee or agent; or
- Any other person having responsible control of the Property.

I also said that I was not satisfied that the person we had been speaking with met this description. Mr Sommer confirmed that he understood the position and that he would discuss the matter with his client's counsel and possibly approach the Court again seeking to have the terms of the orders varied.

16. At around 2:05 pm I left the Property with Mr Sommer and Ms Cockburn but remained nearby pending Mr Sommer's discussions with his client's counsel.
17. I had several further discussions with Mr Sommer over the next hour or so to ascertain his progress. Mr Sommer advised that his client had secured an extension to the service time for the orders in the event access was able to be obtained to the Property, namely until 11:59 pm on 28 June 2021.
18. At approximately 3:15 pm, Mr Sommer and I had a conversation during which Mr Sommer advised that given there did not appear to be anyone willing or able to provide access to the Property that his client had issued instructions to cease trying to access the Property
19. I then departed in my car, but a few minutes later, at 3:19 pm, I received a call from Mr Sommer during which he advised me that a man had come out of the Property and had asked Mr Sommer the purpose of his attendance at the Property. Mr Sommer said he had explained to the man why he was there and asked the man whether he was willing to speak to me to discuss access. The man had confirmed he was willing to do so, so I agreed I would return to the Property.
20. When I arrived back at the Property at around 3:25 pm, Mr Sommer was outside the Property speaking to a man who identified himself as Vince Tesoriero.
21. I explained to Mr Tesoriero that I was an independent solicitor appointed to oversee the execution of a search order which had been made earlier that day by Justice Lee of the Federal Court of Australia. I asked Mr Tesoriero whether he was a resident of the Property and he confirmed that he was, albeit on a temporary basis as a result of being unable to return to his home in Victoria (without quarantining) due to COVID-19.
22. Mr Tesoriero said he was 'ok with' giving myself and the search party access to the house, although he indicated he wanted to call the 'lady of the house', being Mr Papas' partner (identified by him as Louise Agostino) to confirm that she was comfortable with that. Mr Tesoriero then made a call during which he appeared to have a discussion with Ms Agostino and after which he confirmed to me that Ms Agostino had told him she was comfortable with access being granted to the Property.



23. At that point Mr Tesoriero invited us to enter the Property, noting that it was raining and cold, and suggested that we could discuss the matter further once inside. As we entered the Property, I explained that I would take Mr Tesoriero through the Orders once inside. Within the Property was also a woman who Mr Tesoriero identified as his partner, but she did not provide her name.
24. On entering the Property, I remained close to the entry area as did Mr Sommer, Ms Cockburn and Mr McKemmish and no attempts were made to commence the search. I provided Mr Tesoriero with the folder that Mr Sommer had given me containing the Orders and the affidavit material. I took Mr Tesoriero through the Orders and explained their effect, including showing him the detail of the list of documents and items that would be the subject of the search. I emphasised that Mr Tesoriero had the opportunity to seek legal advice and said that I strongly recommend that he do so.
25. Mr Tesoriero then made several calls attempting to contact his lawyer, who he identified as Rocco Panetta. After several minutes he received a call back from Mr Panetta and had a brief discussion with him. On hanging up from the call with Mr Panetta, Mr Tesoriero said to me that Mr Panetta was about to call me.
26. At 3:38 pm, I received a call on my mobile phone from a person identifying himself as Rocco Panetta. Mr Panetta confirmed he had been speaking with Mr Tesoriero and we had a discussion during which Mr Panetta asked me to explain the nature of the search that was to be undertaken. I explained the effect of the Orders to Mr Panetta, including my role as independent solicitor. I also offered to send Mr Panetta a copy of the Orders, which offer he accepted. I asked Mr Sommer to send Mr Panetta the Orders and copy me as a recipient. Mr Sommer did so and I could confirm that the email had been sent because I could access the email on my phone (marked as received at 3:47pm).
27. Mr Panetta and I remained on the call until he confirmed that he had received the Orders and would like time to look at them. Mr Panetta also expressed concern that Mr Tesoriero was not authorised to grant us access to the Property. Mr Panetta asked that we depart the Property while he considered the orders and Mr Tesoriero's authority to provide access, as well as giving him sufficient time to advise to Mr Tesoriero. I agreed to Mr Panetta's request and asked Mr Sommer, Ms Cockburn and Mr McKemmish to likewise depart the Property, which they promptly did.
28. While outside the Property, I asked Mr Sommer and Ms Cockburn whether the Applicant had a position regarding Mr Tesoriero's authority to provide access.
29. Mr Sommer and Ms Cockburn both said that they understood Mr Tesoriero to be a business associate of Mr Papas and began reviewing the affidavit material that had been filed in support of the application for the Orders. After several minutes, Mr Sommer

showed me two documents in Exhibit CMM1 to the affidavit of Ms Murray affirmed 28 June 2021, being a Land Registry title search in relation to the Property that indicated it was owned by a company named 23 Margaret Street Pty Ltd and an ASIC search for that company which indicated that Mr Tesoriero was sole director and sole shareholder of the company.

30. At 3:59 pm, Mr Panetta called me again and said he was of the view that Mr Tesoriero could not authorise the search and that access to the Property would not be provided. I explained to Mr Panetta that I had just been shown the title for the Property and an ASIC search in respect of the corporate owner of the Property which indicated that Mr Tesoriero was sole director and shareholder of the corporate owner. Mr Panetta said he was not aware of that and would consider the question of authority further and discuss the information I had given him with Mr Tesoriero.
31. At 4:13 pm, I received a further call from Mr Panetta during which Mr Panetta advised me that Mr Tesoriero accepted he was authorised to admit us to the Property and that he was willing to do so in order for the search provided for in the orders to be undertaken. At the same time as I received the call from Mr Panetta, Mr Tesoriero opened the front door of the Property and said we were welcome to access the Property.
32. On entry to the Property at around 4:14 pm, I gave Mr Tesoriero the folder containing the Orders and affidavit material and took him to the list of documents and items the subject of the search. Mr Tesoriero reviewed it briefly, but said he had discussed the matter fully with Mr Panetta and was comfortable that the search could proceed. He also said he didn't know where any of the documents or listed items might be but he was happy for the search team to conduct whatever searches were needed.
33. Mr Sommer, Ms Cockburn and Mr McKemmish then commenced moving through the Property conducting a review of documents, electronic devices and any storage areas (such as drawers, filing cabinets, folders and boxes) that appeared likely to contain documents or electronic devices. The search commenced on the ground floor, initially in the office which was adjacent to the front door, moving into the kitchen and lounge area and then the pantry and laundry areas. Mr Sommer also briefly inspected some outdoor cupboards that were visible from the ground floor lounge room.
34. The search then moved to the upper floor, commencing in the master bedroom, then moving through the other 2 bedrooms and storage cupboards through the hallway. Mr Tesoriero and his partner were staying in one of the bedrooms and the search did not extend to their personal belongings which were all in suitcases open on the floor.
35. At all times, Mr Sommer, Ms Cockburn and Mr McKemmish showed appropriate restraint and courtesy and only examined papers and other items that were, or appeared likely to

be, documents or electronic devices that were potentially caught by the list annexed to the Orders. Mr Tesoriero was present throughout the search and was also courteous and accommodating at all times.

36. The search concluded and Mr Sommer, Ms Cockburn and Mr McKemmish and I all departed the Property at approximately 5:15 pm.

Responsive items identified by independent computer expert

37. During the search of the ground floor office, Mr McKemmish identified 2 laptops and 2 USBs. In the master bedroom, Mr McKemmish identified one iPad.
38. Mr McKemmish reviewed the contents of the USBs and advised that he considered that neither USB contained any files that fell within the terms of the Orders.
39. Mr McKemmish was unable to gain access to the laptops or iPad and sought Mr Tesoriero's agreement to remove those devices from the Property in order to examine them further. Mr Tesoriero agreed to that request and Mr McKemmish then listed those items on a Property Receipt which he signed and which was also signed by Mr Tesoriero. A copy of that receipt is attached to Mr McKemmish's report which I discuss at paragraph **42** below.

General observations

40. In my observation, the search of the Property was carried out by Mr Sommer, Ms Cockburn and Mr McKemmish in conformity with the Orders at all times.
41. Mr Tesoriero was present throughout the search and was courteous and accommodating at all times. Neither Mr Tesoriero nor any other person obstructed the conduct of the search.

Report of the independent computer expert

42. On 1 July 2021, I received by email a report from Mr McKemmish documenting his search of computers on the Premises.
43. Now produced and shown to me and marked **AR1** is a copy of the report of Rodney McKemmish dated 1 July 2021.
44. Also on 1 July 2021, I had several telephone and email exchanges with Mr McKemmish in relation to the delivery to me of the devices that he had taken possession of during the search on 28 June 2021. Mr McKemmish delivered the devices to my office at approximately 4 pm on 1 July 2021. I currently retain possession of those devices which are being securely stored at my office pending further direction from the Court as to the method of delivery of those devices to the Court.

Affirmed by the deponent
at Sydney
in New South Wales
on 1 July 2021
Before me: Emily Caradus
NSW JP (210691)

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Signature of deponent



Signature of witness

FORENSIC REPORT

Prepared for:

Federal Court of Australia

In the matter of:

Westpac Banking Corporation (ABN 33 007 457 141) &

Forum Finance Pty Limited & Ors NSD616/2021

Subject:

Report of the independent computer expert

for

23 Margaret St, Rozelle, NSW

I hereby certify that this [and the following 6 page[s]
is/are the annexure marked (AR1), referred to in the
..... Affidavit of Anna Ross
declared before me at Sydney
on 1 July 2021

PREPARED BY:

Rodney McKemmish
Principal
CYTER

.....
[signature of witness]
Emily Caradus - NSW JP (210691)
Date: 01 / 06 / 20

30 June 2021

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Background

1. I Rodney David McKemmish have been appointed the independent computer expert in respect of orders issued on 28 June 2021 (**‘the Orders’**) by Justice LEE of the Federal Court of Australia.
 - a) In accordance with the Orders, on Monday 28 June 2021, I in company with:
 - Ms. Anna Ross, Partner, Corrs Chambers Westgarth (**‘the Independent solicitor’**)
 - Mr. Anthony Sommer, Senior Associate, Minter Ellison (**‘the applicant’s solicitor’**)
 - Ms Kate Cockburn, Lawyer, Minter Ellisonattended the residential premises located at 23 Margaret ST, Rozelle, NSW 2039
2. This report details:
 - a) Actions taken, and items examined or seized at the above addresses.
 - b) Steps taken after the execution of the Orders and prior to the return date.

23 Margaret St, Rozelle, NSW

3. On or about 15:44Hrs on Monday 28 June 2021 I entered the premises at 23 Margaret ST, Rozelle, NSW. On entry I was introduced to the occupant Mr Vince Tesoriero.
4. After a period of time, and after confirmation from Mr Tesoriero, I In company with the applicant’s solicitors commenced a search of the premises.
5. During a search of the ground floor front study room, the following computers and storage devices were located:
 - a) Inserted into a printer was a “Peak” branded external USB storage device (thumb drive);
 - b) At the rear of the desk draw was a “Porsche sport driving school” branded external USB storage device (thumb drive);
 - c) On the shelving unit was a Microsoft Surface laptop;

- d) On the shelving unit was a Dell XPS laptop;
6. During a search of the upstairs front bedroom, the following electronic device was located:
- a) An Apple iPad.
7. Whilst at the premises I undertook the following activities with regard the devices identified above:
- a) The “Peak” branded external USB storage device was connected to my Forensic laptop and I then inspected the contents of the device. Arising from this inspection I determined that the storage device did not contain any information responsive to the orders. The device was returned to its original location.
 - b) The “Porsche sport driving school” branded external USB storage device was connected to my Forensic laptop and I then inspected the contents of the device. Arising from this inspection I determined that the storage device did not contain any information responsive to the orders. The device was returned to its original location.
 - c) I attempted to turn on the Microsoft Surface laptop as it was in a powered down state. Despite my attempts to do so it did not power up. I located in the front study room a Microsoft Power supply and subsequently connected this to the Microsoft Surface laptop. It still did not power up. I formed the view that the laptop may require a period of charging before I could attempt to power it up. As such I was not able to determine if the device contained information responsive to the orders.
 - d) I attempted to turn on the Dell XPS laptop as it was in a powered down state. Despite my attempts to do so it did not power up. I could not locate a suitable Dell power supply for this laptop and as such was not able to determine whether the device contained information responsive to the orders.
 - e) The Apple iPad was in a powered-on state and was locked by way of a PIN code. As I did not have the PIN code, I was unable to access the Apple iPad to determine whether it contained information responsive to the orders.

8. I informed the independent solicitor and the applicant's solicitor of the situation and advised that I would need to take the Microsoft Surface laptop and Dell XPS laptop away to charge them up and attempt to power them up.
9. As I was unable to gain access to the iPad I also advised that I would need the PIN code.
10. I subsequently prepared a receipt for the items listed in the table below which I took possession of for further examination. I signed the receipt and gave it to Mr Tesoriero for his signature. Mr Tesoriero signed the receipt and took a photo of it. I provided the signed receipt to the independent solicitor.

Ref Number	Description	Serial Number
A	1 x DELL XPS Laptop	C5Q2PV2
B	1 x Microsoft Surface Pro Laptop Model 1867	004533693457
C	1 x Apple iPad in case	Not Known
D	1 x Microsoft Surface power supply	Nil

11. I left the premises at approximately 5.15pm.

Subsequent examination

12. I undertook the following examinations after leaving the premises:

Microsoft Surface

13. The Microsoft Surface was connected to the power supply for 2 hours. Notwithstanding this, the Surface still did not power up. Consequently, I am unable to ascertain if it contains any information relevant to the orders.

Dell XPS

14. The Dell XPS laptop was connected to a power supply and after 20 minutes, I was able to power it up. I subsequently obtained a forensic copy of the contents of the internal hard drive.

15. I note that the internal hard drive is encrypted with Microsoft BitLocker. As such the forensic copy is not readable. I attempted to extract the relevant BitLocker recovery key from the laptop, however, to do so, I require the login credentials for the user "Louise Agostino".

Required

16. To complete my analysis, I require the login credentials for the user account "Louise Agostino" or the BitLocker recovery key if available.

Apple iPad

17. The Apple iPad remains locked. I am unable to conduct my inspection without the PIN / Passcode.

Required

18. To complete my analysis, I require the login credentials for the iPad.

Items produced

19. Accompanying this report are the following items which have been provided to the independent solicitor.

Ref Number	Description	Serial Number
A	1 x DELL XPS Laptop	C5Q2PV2
B	1 x Microsoft Surface Pro Laptop Model 1867	004533693457
C	1 x Apple iPad in case	Not Known
D	1 x Microsoft Surface power supply	Nil
E	1 x hard drive containing a forensic copy of the DELL XPS laptop.	N/A

Disclaimer & limitations

20. I disclaim liability to any other person relying upon this report, other than for the purpose for which the report has been prepared. This report may not be disclosed or copied to any other person, other than the courts, the parties in this dispute and their solicitors, without either my or CYTER's express written authority.

A handwritten signature in blue ink, appearing to read 'Rodney McKemmish', with a stylized flourish at the end.

Rodney McKemmish

Principal

CYTER