

Form 59
Rule 29.02(1)

Affidavit



No. NSD616/2021

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

Westpac Banking Corporation ABN 33 007 457 141 and another named in the Schedule
Applicants

Forum Finance Pty Limited ACN 153 301 172 others named in the Schedule
Respondents

Affidavit of: Caitlin Maria Murray
Address: Level 40, Governor Macquarie Tower, 1 Farrer Place, Sydney NSW 2000
Occupation: Solicitor
Date: 2 October 2021

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Filed on behalf of (name & role of party) Westpac Banking Corporation and Westpac New Zealand Limited, applicants
Prepared by (name of person/lawyer) Caitlin Murray
Law firm (if applicable) MinterEllison
Tel (02) 9921 8888 Fax 02 9921 8123
Email caitlin.murray@minterellison.com
Address for service Governor Macquarie Tower, 1 Farrer Place, SYDNEY NSW 2000
(include state and postcode) Our reference: CMM:AGS:1353397

Version 3 form approved 02/05/2019

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E. Hyslop

I, Caitlin Maria Murray of Level 40, Governor Macquarie Tower, 1 Farrer Place, Sydney NSW 2000, Solicitor, say on oath:

1. I am a partner of the firm of solicitors, MinterEllison and the solicitor for the first applicant, Westpac Banking Corporation (**Westpac**), and the second applicant Westpac New Zealand Limited (**WNZL**).
2. This affidavit is sworn in support of the Applicants' Interlocutory Application dated 2 October 2021. The Interlocutory application seeks orders that Mr Rocco Vincenzo Panetta of Panetta Lawyers (**Mr Panetta**), the former solicitor on the record for the Second Respondent, Basile Papadimitriou (**Mr Papas**), provide information about the means to communicate with and serve documents on Mr Papas.
3. Exhibited to me at the time of swearing this affidavit is a paginated bundle of documents marked 'Exhibit CMM-15' (**CMM-15**) Throughout this affidavit I make reference to documents which appear at CMM-15.
4. References to time in this affidavit are to Australian Eastern Standard Time.

Correspondence with Mr Panetta

5. I am informed by Anthony Sommer (**Mr Sommer**), an employed solicitor of MinterEllison under my supervision, and verily believe that during the course of the case management hearing that took place in this proceeding on 22 September 2021, Mr Sommer telephoned Mr Panetta to ask whether he would be appearing at the case management hearing. At this time Mr Panetta was the solicitor on the record for Mr Papas. I am informed by Mr Sommer and verily believe that during this telephone call Mr Panetta said to Mr Sommer words to the effect that he had served on Mr Papas a notice of intention of ceasing to act.
6. On 22 September 2021, at approximately 2.50pm Mr Panetta appeared at the case management hearing and informed the Court that he had served on Mr Papas a notice of intention of ceasing to act. An extract of the transcript (**T11.33-47**) is as follows:

HIS HONOUR: Yes. You're with us now, are you, Mr Panetta?

MR PANETTA: I'm here, your Honour, yes.

HIS HONOUR: Yes. So I think you told Mr Giles' instructing solicitor that you have filed a notice of ceasing to act on behalf of – behalf of whom?

Signed:



Taken by:



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E. Nyrad
Associate

MR PANETTA: I've served a notice of intention to act on the second respondent.

HIS HONOUR: Yes.

MR PANETTA: Which was, as you know, has to be followed by a notice of intention of ceasing to act. In due course – I think it's another couple of days I have to do it. I haven't filed an appearance in relation to the 28th respondent, though I accepted service of documents on behalf of it.

- 7. On 29 September 2021, correspondence was exchanged between MinterEllison and Panetta Lawyers as follows:
 - (a) at 9.10am, Mr Sommer received an email from Mr Panetta, to which I was copied, that attached a sealed copy of Notice of Ceasing to Act (the **Notice**) in relation to Mr Papas. The Notice nominated the address 23 Margaret Street Rozelle in the State of New South Wales as the last known residential or business address for Mr Papas; and
 - (b) at 2.08pm, Mr Sommer sent an email to Mr Panetta, to which I was copied, that sought Mr Papas' last known contact details on the basis that Mr Papas does not presently reside at the address listed in the Notice.

A copy of the email chain containing the emails referred to at paragraphs (a) and (b) above, including the Notice, is at pages 1 to 4 of CMM-15.

- 8. At 7.40pm on 30 September 2021, Mr Sommer sent an email, to which I was copied, to various parties in connection with the case management hearing listed on 1 October 2021 that provided, by electronic file link and attachment, the evidence on which the applicants intended to rely. This email was copied to Mr Panetta. This email was also sent to the email address billpapas07@gmail.com. A copy of this email is in the chain referred to in paragraph 10 below.
- 9. On 30 September 2021, at 8.16pm Mr Panetta sent an email to Mr Sommer, to which I was copied, that said the form of notice of ceasing to act only provided for the last known residential or business address, not an email address. A copy of this email is at page 5 of CMM-15.
- 10. At 8.41pm on 30 September 2021, Mr Panetta responded to Mr Sommer's 7.40pm email and requested that the 8.16pm email be brought to the attention of the Court. A copy of 8.41pm email from Mr Panetta (to which I am copied), with Mr Sommer's earlier email from 7.40pm (without attachments) is at pages 6 to 11 of CMM-15.

Signed:  Taken by: 

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E. Howard
Associate
Date:

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Date:

11. In response to his 7.40pm email, Mr Sommer received a Mimecast email software error message that said the email sent to billpapas07@gmail.com could not be delivered. Mr Sommer has provided me with a copy of this error message email, which is at page 12 of CMM-15.

12. I am informed by Mr Sommer and verily believe that his emails of 10.16am and 5.05pm on 30 September 2021, which were also copied to billpapas07@gmail.com did not return Mimecast error messages. Mr Sommer's emails of 30 September 2021 to billpapas07@gmail.com are included in the email chain received from Mr Panetta at 8.41pm (see p 9 and p 7 of CMM-15).

13. On 1 October 2021, before the case management hearing listed at 12pm on that day, Mr Sommer and Mr Panetta exchanged further emails (to which I was copied) as follows:

- (a) at 10.32am Mr Sommer sent a further email to Mr Panetta, informing him, among other things that the applicants intended to seek an order that, subject to further order, he provide information in relation to Mr Papas' address and contact details. A copy of this email, without attachments, is at page 13 of CMM-15;
- (b) at 10.42am, Mr Sommer sent an email to the Associate to Justice Lee, copied to among others Mr Panetta, that attached the applicants' submissions;
- (c) in response to Mr Sommer's 10.42am email, Mr Panetta sent an email. This email among other matters said that Mr Panetta had concerns about disclosing such matters as a telephone number due to his ongoing obligations to maintain confidentiality, client legal privilege and legal professional privilege on behalf of Mr Papas; and
- (d) at 11.45am Mr Sommer responded to Mr Panetta's email that provided the Court Teams hearing details and invited Mr Panetta to appear.

A copy of the email chain with the emails referred to in paragraphs (b) to (d) above is at pages 14 to 16 of CMM-15.

14. On 1 October 2021, during and after the directions hearing, Mr Sommer attempted to contact Mr Panetta as follows:

- (a) I am informed by Mr Sommer and verily believe that at approximately 2.38pm Mr Sommer attempted to telephone Mr Panetta. When unable to contact Mr Panetta by telephone, Mr Sommer sent an email at 2.45pm to Mr Panetta that

Signed:  Taken by: 

E. Hynd

Associate

asked Mr Panetta if he was available to appear before the Court. A further copy of the Teams details was provided in the email attachment;

- (b) at 2.50pm Mr Sommer sent a further email to Mr Panetta that informed Mr Panetta that the matter had been stood down until 4:15pm and sought confirmation as to whether Mr Panetta would be appearing;
 - (c) A copy of the email chain with the emails referred to in paragraphs (a) and (b) above, to which I was copied, is at pages 17 to 19 of CMM-15;
 - (d) At approximately 4.11pm Mr Sommer sent a text message to the mobile number known for Mr Panetta. Mr Sommer has provided me with a screenshot of this message, a copy of which is at page 20 of CMM-15;
15. On 1 October 2021, at 6.21pm Mr Sommer sent an email to the Associate to Justice Lee which attached proposed short minutes of order. The short minutes included an order that applicants have leave to file an interlocutory application, to be served on Mr Panetta, requiring that Mr Panetta provide information about the means to communicate with and serve documents on Mr Papas. Mr Panetta was copied to this email. A copy of the further communications with Mr Panetta to 2 October 2021 are at pages 21 to 32 of CMM-15. The email sent referred to in this paragraph is at pages 22 to 23 of CMM-15.
16. On 1 October 2021, at 7.29pm I was copied to an email from the Associate to Justice Lee which attached a stamped copy of the Court's orders dated 1 October 2021 that were in accordance with the short minutes attached to Mr Sommer's email to which I refer in paragraph 15 above (**Orders**). I note that Mr Panetta was copied to this email. A copy of this email is at page 22 of CMM-15.
17. On 2 October 2021, at 7.50am Mr Sommer sent an email to Mr Panetta attaching a copy of the Orders in which he set out paragraphs 3 to 5 within the email. A copy of Mr Sommer's email is at page 21 of CMM-15, and a copy of the Orders that were attached to it is at pages 30 to 32 of CMM-15.

Signed:



Taken by:



Sworn by the deponent)
at Sydney)
in New South Wales)
on 2 October 2021)

Signature of deponent

Before me:

Signature of witness
Alana Stephanie Giuseppina Galasso
Solicitor
Level 40, Governor Macquarie Tower, 1 Farrer
Place NSW 2000.

As a witness, I certify the following matters concerning the person who made this affidavit (deponent):

1. This affidavit is witnessed over audio visual link in accordance with Part 2B of the *Electronic Transactions Act 2000* (NSW).
2. I saw the face of the deponent.
3. I observed the deponent signing a copy of this affidavit in real time.
4. I attest or otherwise confirm witnessing the deponent's signature by signing this affidavit.
5. I am reasonably satisfied this affidavit signed by me is a copy of the affidavit signed by the deponent.
6. I have known the deponent for over twelve months.

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E. Hyrad 2.10.21
Associate Dat

Signed: Taken by:



Schedule of Parties

No. NSD616/2021

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

Applicants

First Applicant Westpac Banking Corporation ABN 33 007 457 141
Second Applicant Westpac New Zealand Limited (company registration number company number 1763882)

Respondents

First Respondent Forum Finance Pty Limited (in liquidation) ACN 153 301 172
Second Respondent: Basile Papadimitriou
Third Respondent Vincenzo Frank Tesoriero
Fourth Respondent: Forum Group Financial Services Pty Ltd (provisional liquidators appointed) ACN 623 033 705
Fifth Respondent: Forum Group Pty Ltd (Receivers Appointed) (in liquidation) ACN 153 336 997
Sixth Respondent: Forum Enviro Pty Ltd (provisional liquidators appointed) ACN 168 709 840
Seventh Respondent: Forum Enviro (Aust) Pty Ltd (provisional liquidators appointed) ACN 607 484 364
Eighth Respondent 64-66 Berkeley St Hawthorn Pty Ltd ACN 643 838 662
Ninth Respondent 14 James Street Pty Ltd (in liquidation) ACN 638 449 206
Tenth Respondent 26 Edmonstone Road Pty Ltd (in liquidation) ACN 622 944 129
Eleventh Respondent 5 Bulkara Street Pty Ltd (in liquidation) ACN 630 982 160
Twelfth Respondent 6 Bulkara Street Pty Ltd (in liquidation) ACN 639 734 473
Thirteenth Respondent 23 Margaret Street Pty Ltd ACN 623 715 373
Fourteenth Respondent 1160 Glen Huntly Road Pty Ltd ACN 639 447 984
Fifteenth Respondent 14 Kirwin Road Morwell Pty Ltd ACN 641 402 093
Sixteenth Respondent Canner Investments Pty Ltd ACN 624 176 049

Signed: Taken by:

Seventeenth Respondent	123 High Street Taradale Pty Ltd ACN 639 872 512
Eighteenth Respondent	160 Murray Valley Hwy Lake Boga Pty Ltd ACN 641 392 921
Nineteenth Respondent	31 Ellerman Street Dimboola Pty Ltd ACN 641 392 887
Twentieth Respondent	4 Cowslip Street Violet Town Pty Ltd ACN 639 872 352
Twenty-First Respondent	55 Nolan Street Maryborough Pty Ltd ACN 641 392 912
Twenty-Second Respondent	89 Betka Road Mallacoota Pty Ltd ACN 641 393 179
Twenty-Third Respondent	9 Gregory Street Ouyen Pty Ltd ACN 641 392 707
Twenty-Fourth Respondent	9 Main Street Derrinallum Pty Ltd ACN 639 872 736
Twenty-Fifth Respondent	286 Carlisle Street Pty Limited ACN 610 042 343
Twenty-Sixth Respondent	275 High Street Golden Square Pty Ltd ACN 639 870 545
Twenty-Seventh Respondent	Mazcon Investments Hellas IKE
Twenty-Eighth Respondent	Palante Pty Ltd ACN 135 344 151
Twenty-Ninth Respondent	Anastasios Giamouridis
Thirtieth Respondent	The Forum Group of Companies Pty Ltd (in liquidation) ACN 151 964 626
Thirty-First Respondent	Iugis Pty Ltd (in liquidation) ACN 632 882 243
Thirty-Second Respondent	Iugis (UK) Limited
Thirty-Third Respondent	Iugis Holdings Limited
Thirty-Fourth Respondent	Iugis Global Financial Services Limited
Thirty-Fifth Respondent	Iugis Finance Limited
Thirty-Sixth Respondent	Spartan Consulting Group Pty Ltd (in liquidation) ACN 168 989 544
Thirty-Seventh Respondent	Intrashield Pty Ltd (in liquidation) ACN 133 426 534
Thirty-Eighth Respondent	Tesoriero Investment Group Pty Ltd ACN 161 088 115
Thirty-Ninth Respondent	Mangusta (Vic) Pty Ltd ACN 631 520 682
Fortieth Respondent	193 Carlisle Street Enterprises Pty Ltd ACN 612 615 237
Forty-First Respondent	8-12 Natalia Ave Oakleigh Pty Ltd ACN 643 838 626
Forty-Second Respondent	Iugis Hellas IKE
Forty-Third Respondent	Iugis Energy SA