

## NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 16/07/2021 5:01:01 PM AEST and has been accepted for filing under the Court's Rules. Filing and hearing details follow and important additional information about these are set out below.

### Filing and Hearing Details

Document Lodged:	Originating Application - Form 15 - Rule 8.01(1)
File Number:	NSD616/2021
File Title:	WESTPAC BANKING CORPORATION ABN 33 007 457 141 v FORUM FINANCE PTY LIMITED & ORS
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	To Be Advised
Time and date for hearing:	To Be Advised
Place:	To Be Advised



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

Dated: 20/07/2021 11:38:27 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 Reason for Listing shown above is descriptive and does not limit the issues that might be dealt with, or the orders that might be made, at the hearing.

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.



**Further Amended Originating application**

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 ACN 153 301 172 and others identified in the Schedule**  
Respondents

To the Respondents

The Applicant applies for the relief set out in this application.

The Court will hear this application, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, then the Court may make orders in your absence.

You must file a notice of address for service (Form 10) in the Registry before attending Court or taking any other steps in the proceeding.

**Time and date for hearing:**

**Place:** Federal Court of Australia  
Law Courts Building  
Queens Square  
SYDNEY NSW 2000

Date: ~~—~~: 16 July 2021

Signed by an officer acting with the authority  
of the District Registrar

Filed on behalf of (name & role of party) Westpac Banking Corporation, Applicant  
Prepared by (name of person/lawyer) Caitlin Murray  
Law firm (if applicable) MinterEllison  
Tel (02) 9921 4279 Fax (02) 9921 8123  
Email caitlin.murray@minterellison.com  
**Address for service** Level 40, Governor Macquarie Tower, 1 Farrer Place, Sydney NSW 2000  
(include state and postcode) Our reference: 1353397

[Version 2 form approved 09/05/2013]



## Details of claim

The Applicant claims:

### As against the First Respondent

1. A declaration that the First Respondent holds on trust for the Applicant all funds received from the Applicant (whether directly or from Eqwe Pty Limited ACN 630 535 554 (formerly named BHO Funding Pty Limited) (**Eqwe**) as agent for the Applicant) in connection with the Purported Contracts and also the traceable property acquired using those funds.
- 1A. An order that the First Respondent disclose to the Applicant the amount of funds paid by the Applicant (whether directly or from Eqwe as agent for the Applicant) in connection with the Purported Contracts that it has received or controls through related entities and all facts within its knowledge as to the present whereabouts of those funds or the traceable property acquired using those funds.
- 1B. An order that the First Respondent account to the Applicant for all funds that it has received or controls through related entities that were paid by the Applicant (whether directly or from Eqwe as agent for the Applicant) in connection with the Purported Contracts.
2. Judgment for the Applicant against the First Respondent in the amount of \$253,766,555.76.
3. An order that the First Respondent pay damages in deceit or the tort of unlawful means conspiracy.
4. An order that the First Respondent pay damages for breach of contract.
5. An order that the First Respondent pay damages pursuant to section 236 of the Australian Consumer Law set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth) (**Australian Consumer Law**).
6. An order that the First Respondent pay damages pursuant to section 12GF of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**), further or alternatively pursuant to section 1041I of the *Corporations Act 2001* (Cth) (**Corporations Act**).
7. An order that the First Defendant be wound up under the provisions of the Corporations Act.
8. An order that Jason Preston and Jason Ireland of Level 12, 20 Martin Place, Sydney NSW 2000 jointly and severally, or some other fit and proper person, be appointed liquidator of the First Respondent, Forum Finance Pty Ltd.

**As against the Second Respondent**

- 8A. Judgment for the Applicant against the Second Respondent in the amount of \$253,766,555.76.
- 8B. A declaration that the Second Respondent holds on trust for the Applicant all funds that he has received or controls that were paid by the Applicant (whether directly or from Eqwe as agent for the Applicant) in connection with the Purported Contracts, or the traceable property acquired using those funds.
- 8C. An order that the Second Respondent disclose to the Applicant the amount of funds paid by the Applicant (whether directly or from Eqwe as agent for the Applicant) in connection with the Purported Contracts that he has received or controls through related entities, when those funds were received and all facts within his knowledge as to the present whereabouts of those funds or the traceable property acquired using those funds.
- 8D. An order that the Second Respondent account to the Applicant for all funds that he has received or controls through related entities that were paid by the Applicant (whether directly or from Eqwe as agent for the Applicant) in connection with the Purported Contracts.
- 8E. An order that the Second Respondent pay equitable compensation.
- 8F. An order that the Second Respondent pay damages for the tort of unlawful means conspiracy.
- 9. An order that the Second Respondent pay damages in deceit.
- 10. An order that the Second Respondent pay damages pursuant to section 236 of the Australian Consumer Law.
- 11. An order that the Second Respondent pay damages pursuant to section 12GF of the ASIC Act, further or alternatively pursuant to section 1041I of the Corporations Act.

**As against the Third Respondent**

- 11A. Judgment for the Applicant against the Third Respondent in the amount of \$253,766,555.76.
- 11B. A declaration that the Third Respondent holds on trust for the Applicant all funds that he has received or controls that were paid by the Applicant (whether directly or from Eqwe as agent for the Applicant) in connection with the Purported Contracts, or the traceable property acquired using those funds.
- 11C. An order that the Third Respondent disclose to the Applicant the amount of funds paid by the Applicant (whether directly or from Eqwe as agent for the Applicant) in connection with the Purported Contracts that he has received or controls through related entities,



when those funds were received and all facts within his knowledge as to the present whereabouts of those funds or the traceable property acquired using those funds.

- 11D. An order that the Third Respondent account to the Applicant for all funds that he has received or controls through related entities that were paid by the Applicant (whether directly or from Eqwe as agent for the Applicant) in connection with the Purported Contracts.
- 11E. An order that the Third Respondent pay equitable compensation.
- 11F. An order that the Third Respondent pay damages for the tort of unlawful means conspiracy.

**As against each Respondent (including those identified below)**

- 12. Interest, including interest up to judgment pursuant to section 52(2)(a) of the *Federal Court Act 1976* (Cth) (**Federal Court Act**).
- 13. Interest on judgment pursuant to section 52 of the *Federal Court Act* and rule 39.06 of the *Federal Court Rules 2011* (Cth).
- 14. Costs.
- 15. Such further or other orders as the Court deems fit.

**As against the Fourth Respondent**

- 16. A declaration that the Fourth Respondent holds on trust for the First Applicant all funds that it has received that were paid by the First Applicant (whether directly or from Eqwe as agent for the First Applicant) in connection with the Purported Contracts and/or the traceable property acquired using those funds.
- 17. An order that the Fourth Respondent disclose to the First Applicant the amount of funds paid by the First Applicant (whether directly or from Eqwe as agent for the First Applicant) in connection with the Purported Contracts that it has received or controls through related entities and all facts within its knowledge as to the present whereabouts of those funds or the traceable property acquired using those funds.
- 18. An order that the Fourth Respondent account to the First Applicant for all funds that it has received or controls through related entities that were paid by the First Applicant (whether directly or from Eqwe as agent for the First Applicant) in connection with the Purported Contracts.
- 19. Judgment for the First Applicant against the Fourth Respondent in the amount of \$253,766,555.76.
- 20. An order that the Fourth Respondent pay equitable compensation.



21. An order that the Fourth Respondent pay damages in the tort of unlawful means conspiracy.
22. An order that the Fourth Respondent be wound up under the provisions of the Corporations Act.
23. An order that Jason Preston and Jason Ireland of Level 12, 20 Martin Place, Sydney NSW 2000 jointly and severally, or some other fit and proper person, be appointed liquidator of the Fourth Respondent.

#### **As against the Fifth Respondent**

24. A declaration that the Fifth Respondent holds on trust for the First Applicant all funds that it has received that were paid by the First Applicant (whether directly or from Eqwe as agent for the First Applicant) in connection with the Purported Contracts and/or the traceable property acquired using those funds.
25. An order that the Fifth Respondent disclose to the First Applicant the amount of funds paid by the First Applicant (whether directly or from Eqwe as agent for the First Applicant) in connection with the Purported Contracts that it has received or controls through related entities and all facts within its knowledge as to the present whereabouts of those funds or the traceable property acquired using those funds.
26. An order that the Fifth Respondent account to the First Applicant for all funds that it has received or controls through related entities that were paid by the First Applicant (whether directly or from Eqwe as agent for the First Applicant) in connection with the Purported Contracts.
27. Judgment for the First Applicant against the Fifth Respondent in the amount of \$253,766,555.76.
28. An order that the Fifth Respondent pay equitable compensation.
29. An order that the Fifth Respondent pay damages in the tort of unlawful means conspiracy.
30. An order that the Fifth Respondent be wound up under the provisions of the Corporations Act.
31. An order that Jason Preston and Jason Ireland of Level 12, 20 Martin Place, Sydney NSW 2000 jointly and severally, or some other fit and proper person, be appointed liquidator of the Fifth Respondent.

#### **As against the Sixth Respondent**

32. A declaration that the Sixth Respondent holds on trust for the First Applicant all funds that it has received that were paid by the First Applicant (whether directly or from Eqwe



as agent for the First Applicant) in connection with the Purported Contracts and/or the traceable property acquired using those funds.

33. An order that the Sixth Respondent disclose to the First Applicant the amount of funds paid by the First Applicant (whether directly or from Eqwe as agent for the First Applicant) in connection with the Purported Contracts that it has received or controls through related entities and all facts within its knowledge as to the present whereabouts of those funds or the traceable property acquired using those funds.
34. An order that the Sixth Respondent account to the First Applicant for all funds that it has received or controls through related entities that were paid by the First Applicant (whether directly or from Eqwe as agent for the First Applicant) in connection with the Purported Contracts.
35. Judgment for the First Applicant against the Sixth Respondent in the amount of \$253,766,555.76.
36. An order that the Sixth Respondent pay equitable compensation.
37. An order that the Sixth Respondent pay damages in the tort of unlawful means conspiracy.
38. An order that the Sixth Respondent be wound up under the provisions of the Corporations Act.
39. An order that Jason Preston and Jason Ireland of Level 12, 20 Martin Place, Sydney NSW 2000 jointly and severally, or some other fit and proper person, be appointed liquidator of the Sixth Respondent.

#### **As against the Seventh Respondent**

40. A declaration that the Seventh Respondent holds on trust for the First Applicant all funds that it has received that were paid by the First Applicant (whether directly or from Eqwe as agent for the First Applicant) in connection with the Purported Contracts and/or the traceable property acquired using those funds.
41. An order that the Seventh Respondent disclose to the First Applicant the amount of funds paid by the First Applicant (whether directly or from Eqwe as agent for the First Applicant) in connection with the Purported Contracts that it has received or controls through related entities and all facts within its knowledge as to the present whereabouts of those funds or the traceable property acquired using those funds.
42. An order that the Seventh Respondent account to the First Applicant for all funds that it has received or controls through related entities that were paid by the First Applicant



(whether directly or from Eqwe as agent for the First Applicant) in connection with the Purported Contracts.

43. Judgment for the First Applicant against the Seventh Respondent in the amount of \$253,766,555.76.
44. An order that the Seventh Respondent pay equitable compensation.
45. An order that the Seventh Respondent pay damages in the tort of unlawful means conspiracy.
46. An order that the Seventh Respondent be wound up under the provisions of the Corporations Act.
47. An order that Jason Preston and Jason Ireland of Level 12, 20 Martin Place, Sydney NSW 2000 jointly and severally, or some other fit and proper person, be appointed liquidator of the Seventh Respondent.

In this originating application, the **Purported Contracts** means any arrangement recorded by the First Respondent as a contract for the purchase of equipment between the First Respondent and a **Customer**, in respect of which the receivable for the Contract was subsequently sold by the First Respondent to Eqwe.

A Customer means any one of the following customers:

- a. Veolia Environmental Services (Australia) Pty Ltd ACN 051 316 584;
- b. WesTrac Pty Limited ACN 009 342 572;
- c. ALH Group Pty Limited ACN 098 212 134;
- d. Scentre Shopping Centre Management Pty Ltd ACN 000 712 710;
- e. Coles Supermarkets Australia Pty Limited ACN 004 189 708;
- f. Catholic Healthcare Limited ACN 064 946 318; and
- g. The Martinez HWL Practice Trust & The East HWL Practice Trust & The Warat HWL Practice Trust & The Marin HWL Practice Trust & Others trading as 'HWL Ebsworth Lawyers' ABN 37 246 549 189.

### **Applicant's address**

The Applicant's address for service is:

Place: Level 40, Governor Macquarie Tower, 1 Farrer Place, Sydney NSW 2000

Attention: Caitlin Murray



Email: caitlin.murray@minterellison.com

The Applicant's address is 275 Kent Street, Sydney NSW 2000.

### **Service on the Respondents**

It is intended to serve this application on all Respondents.

Date: ~~---~~ 16 July 2021

A handwritten signature in blue ink, appearing to read 'Caitlin Murray', written over a horizontal dotted line.

Signed by Caitlin Maria Murray  
MinterEllison  
Lawyer for the Applicant



## Schedule

No. NSD616 of 2021

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

### Respondents

First Respondent: Forum Finance Pty Limited ACN 153 301 172  
Second Respondent: Basile Papadimitriou  
Third Respondent: Vincenzo Frank Tesoriero  
Fourth Respondent: Forum Group Financial Services Pty Ltd (Administrators Appointed)  
ACN 623 033 705  
Fifth Respondent: Forum Group Pty Ltd (Receivers Appointed) (Administrators  
Appointed) ACN 153 336 997  
Sixth Respondent: Forum Enviro Pty Ltd (Administrators Appointed)  
ACN 168 709 840  
Seventh Respondent: Forum Enviro (Aust) Pty Ltd (Administrators Appointed)  
ACN 607 484 364

Date: July 2021