

Form 35
Rule 17.01(1)

Interlocutory application

No. NSD 747 of 2021

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

**IN THE MATTER OF THE FORUM GROUP OF COMPANIES PTY LIMITED ACN 151 964 626
(IN LIQUIDATION)
(ACN 151 964 626)**

14 James Street Pty Ltd ACN 638 449 206 (In Liquidation) and others named in the
Schedule

Applicants

The Applicants apply for the interlocutory orders 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.

Time and date for hearing: 3 September 2021 at 2.15pm

Place: Law Courts Building, 184 Phillip Street, Queens Square, Sydney NSW 2000

Date: August 2021

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

Filed on behalf of: 14 James Street Pty Ltd ACN 638 449 206 (In Liquidation) and others, the
Applicants

Prepared by: Chris Prestwich

Law firm: Allens

Tel: (02) 9230 4000

Fax: (02) 9230 5333

Email: Chris.Prestwich@allens.com.au

Address for service:

Deutsche Bank Place, 126 Phillip Street, Sydney NSW 2000

Email: Chris.Prestwich@allens.com.au and Kirsty.Prinsloo@allens.com.au

DX: 105 Sydney

KBPS 515758885v2 121031672

Interlocutory orders sought

Real property

1. Pursuant to s 57 of the *Federal Court of Australia Act 1976* (Cth), Jason Ireland and Jason Preston of McGrathNicol, Level 12, 20 Martin Place Sydney in the State of New South Wales be appointed as receivers and managers (**Receivers**) of the properties listed in items 1 to 4 of Annexure A to these Orders (**Real Properties**) and any sale proceeds or income of those Real Properties.
2. The Receivers be authorised to take possession of, preserve, maintain and sell the Real Properties.
3. The Receivers have the power to do, in Australia and elsewhere, all things necessary or convenient to be done for or in connection with, or as incidental to achieving the objective set out in Order 2, including without limitation, the power to:
 - (a) Enter into possession of, preserve, maintain and sell the Real Properties;
 - (b) To dispose of the Real Properties;
 - (c) To insure the Real Properties;
 - (d) To appoint a solicitor or other professionally qualified person to assist the Receivers in connection with their appointment in respect of the Real Properties;
 - (e) To appoint an agent to conduct the sale and do any business that the Receivers are unable to do or that it is unreasonable to expect the Receivers to do personally in respect of the Real Properties;
 - (f) Pay any outgoings or collect any rent in connection with the Real Properties;
 - (g) Sign any documents on behalf of the Company in furtherance of the objective set out in Order 2;
 - (h) Pay the costs, expenses and remuneration of the Receivers in acting as Receivers of the assets be paid from the sale proceeds or income of the Real Properties referable to those costs; and
 - (i) Pay the balance into Court or if agreed between Westpac Banking Corporation and the beneficiaries of the unit trusts on whose behalf the Real Properties are held, into a joint trust account held by MinterEllison and Fortis Law.

4. The need for the Receivers to file a guarantee under r 14.21 and r 14.22 of the *Federal Court Rules 2011* (Cth) in respect of their appointment under order 1 be dispensed with.

XOXO Yacht

5. Pursuant to s 57 of the *Federal Court of Australia Act 1976* (Cth), Jason Ireland and Jason Preston of McGrathNicol, Level 12, 20 Martin Place Sydney in the state of New South Wales be appointed as receivers and managers (**Receivers**) over the property listed in item 5 of Annexure A to these Orders (**XOXO Yacht**).
6. The Receivers be authorised to take possession of, preserve, maintain and sell the XOXO Yacht.
7. The Receivers have the power to do, in Australia and elsewhere, all things necessary or convenient to be done for or in connection with, or as incidental to achieving the objective set out in order 6, including without limitation:
 - (a) Take possession of, preserve, maintain and sell the XOXO Yacht;
 - (b) To dispose of the XOXO Yacht;
 - (c) To insure the XOXO Yacht;
 - (d) To appoint a solicitor or other professionally qualified person to assist the Receivers in connection with their appointment in respect of the XOXO Yacht;
 - (e) To appoint an agent to conduct the sale and to do any business that the Receivers are unable to do or that it is unreasonable to expect the Receivers to do personally in respect of the XOXO Yacht;
 - (f) Pay any outgoings or collect any rent in connection with the XOXO Yacht; and
 - (g) Sign any documents on behalf of the Company in furtherance of the objective set out in Order 6;
 - (h) Pay the costs, expenses and remuneration of the Receivers in acting as Receivers of the assets be paid from the sale proceeds or income of the XOXO Yacht; and
 - (i) Pay the balance into Court or if agreed between Westpac Banking Corporation and Mangusta (Vic) Pty Ltd into a joint trust account held by MinterEllison and Fortis Law.

8. The need for the Receivers to file a guarantee under r 14.21 and r 14.22 of the *Federal Court Rules 2011* (Cth) in respect of their appointment under order 5 be dispensed with.

Miscellaneous

9. The Applicants costs of this application be paid out of the sale proceeds or income of the Real Properties and XOXO Yacht.
10. Liberty be granted to any person affected by these orders, including any creditor of the Applicants or the Trusts or any beneficiary of the Trusts to apply to vary or set aside these orders on 7 business days' notice to the applicants and to the Court by sending an email to Associate.LeeJ@fedcourt.gov.au
11. Liberty be granted to the Applicants to apply to the Court for orders discharging and releasing the Receivers on 7 business days' notice by sending an email to Associate.LeeJ@fedcourt.gov.au.
12. Any other orders as the Court deems fit.

THE COURT NOTES:

13. Without admission by any party the agreement of Westpac Banking Corporation and the Receivers that the appointment of the Receivers of the properties listed in items 1 to 5 of Annexure A to these Orders for the purposes of sale ('the **Properties**') does not in any way affect:
 - (a) Any rights of the current registered proprietor or beneficial owner of the properties or the Unit Holders or beneficiaries in any Trust which is the beneficial owner of any of the Properties that they may have to the proceeds of sale of any property;
 - (b) The right of Vincenzo Frank Tesoriero (or a related entity of Mr Tesoriero) to apply to the Court to have any part of any proceeds of sale received from the sale of the properties released from the freezing orders made by the Court on 2 July 2021 (as varied on 9 July 2021 and 37 August 2021) (**Freezing Orders**) for the purpose of the payment of his living expenses and/or legal costs in such an amount as is approved by the Court;
 - (c) The right of Vincenzo Frank Tesoriero or any other person to exercise any right that they may have pursuant to any trust deed or as a beneficiary of any trust or as a director or shareholder of any company to facilitate payment out from the

proceeds of sale of any property any amounts referred to in (b) above that are approved for payment out by the Court; or

- (d) The right of Vincenzo Frank Tesoriero or any party affected by the Freezing Orders to apply to vary or discharge the Freezing Orders.

Service on the Respondents

It is not intended to serve this application of any party.

Date: 28 August 2021



Signed by Christopher Prestwich
Lawyer for the Applicants

Annexure A

Item	Party	Property (including the contents of that property to the extent it is owned by the 'Party' included in the second column)
1	Properties held by 14 James Street Pty Limited (In Liquidation) as trustee of the 14 James Street Unit Trust	<p>16 James St Clayton South VIC 3169 Vol: 12170 Folio: 467</p> <p>Warehouse 1, 9 Parsons St, Clayton South VIC 3169 Vol: 12170 Folio: 465</p> <p>Warehouse 2, 9 Parsons St, Clayton Sth VIC 3169 Vol: 12170 Folio: 468</p> <p>Warehouse 3, 9 Parsons St, Clayton Sth VIC 3169 Vol: 12170 Folio: 479</p> <p>10 James Street, Clayton South, VIC 3169 Vol: 12170 Folio: 472</p> <p>12 James Street, Clayton South VIC 3169 Vol: 12170 Folio: 471</p> <p>14 James Street, Clayton South VIC 3169 Vol: 12170 Folio: 470</p> <p>18 James Street, Clayton South VIC 3169 Vol: 12170 Folio: 466</p> <p>8 Olive Street, Clayton South VIC 3169 Vol: 12170 Folio: 474</p>
2	Property held by 26 Edmonstone Road Pty Ltd (In Liquidation) as trustee of the 26 Edmonstone Road Unit Trust	<p>26 Edmondstone Road, Bowen Hills QLD 4006 Title Ref: 12134186</p>
3	Property held by 5 Bulkara Street Pty Ltd (In Liquidation) as trustee of the 5 Bulkara Street Unit Trust	<p>5 Bulkara Street Wagstaffe NSW 2257 Folio: 2/1141260</p>
4	Property held by 6 Bulkara Street Pty Ltd (In Liquidation) as trustee of the 6 Bulkara Street Unit Trust	<p>6 Bulkara Street Wagstaffe, NSW 2257 Folio: 3/1141260</p>
5	Property formerly owned by Intrashield Pty Limited (In Liquidation)	<p>"XOXO" Motor Yacht Cayman Islands Official Number 734587</p>

Schedule

No. NSD 747 of 2021

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

IN THE MATTER OF THE FORUM GROUP OF COMPANIES PTY LIMITED ACN 151 964 626 (IN LIQUIDATION)

(ACN 151 964 626)

14 James Street Pty Ltd ACN 638 449 206 (In Liquidation) and others

Applicants

First Plaintiff:	14 James Street Pty Ltd ACN 638 449 206 (In Liquidation)
Second Plaintiff:	26 Edmonstone Road Pty Ltd ACN 622 944 129 (In Liquidation)
Third Plaintiff:	5 Bulkara Street Pty Ltd ACN 630 982 160 (In Liquidation)
Fourth Plaintiff:	6 Bulkara Street Pty Ltd ACN 639 734 473 (In Liquidation)
Fifth Plaintiff:	Intrashield Pty Ltd ACN 133 426 534 (In Liquidation)

28 August 2021

Filed on behalf of: 14 James Street Pty Ltd ACN 638 449 206 (In Liquidation) and others, the Applicants

Prepared by: Chris Prestwich
Law firm: Allens
Tel: (02) 9230 4000 Fax: (02) 9230 5333
Email: Chris.Prestwich@allens.com.au

Address for service:

Deutsche Bank Place, 126 Phillip Street, Sydney NSW 2000
Email: Chris.Prestwich@allens.com.au and Kirsty.Prinsloo@allens.com.au
DX: 105 Sydney
KBPS 515758885v2 121031672