



Issued: 11 April 2018 11:29 AM

## JUDGMENT/ORDER

### COURT DETAILS

Court	Supreme Court of NSW
Division	Equity
List	Corporations List
Registry	Supreme Court Sydney
Case number	2015/00237028

### TITLE OF PROCEEDINGS

First Plaintiff	Stephen Ernest Vaughan and Ian Richard Hall in their capacity as Liquidators of BBY Limited (Receivers and Managers Appointed)(In Liquidation) ACN 006 707 777
Second Plaintiff	BBY Limited (Receivers and Managers Appointed)(In Liquidation) ACN 006 707 777
First Defendant	J Mazzetti Pty Ltd ATF J Mazetti Pty Limited Staff Superannuation Fund & ORS ACN 006705602
Second Defendant	Peter Brian Haywood and Bronwen Menai Haywood as trustees for the Haywood Superannuation Fund
Number of Defendants	5

### DATE OF JUDGMENT/ORDER

Date made or given	5 April 2018
Date entered	5 April 2018

### TERMS OF JUDGMENT/ORDER

This matter is listed for Hearing on 22 June 2018 9:45 AM before the Supreme Court - Civil at Supreme Court Sydney.

Note document entitled Short Minutes of Order initialled by me, dated this day & placed with the papers.

THE COURT MAKES ORDERS in accordance with the said Short Minutes.

THE COURT FURTHER ORDERS THAT Order 16 is not intended to limit the ability of any party wishing to do so to apply at a later stage for the review of the liquidators' costs and remuneration on the basis of proportionality.

Liberty is reserved to the first defendant to apply to vary or set aside these orders by arrangement with my Associate on application within seven days.

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## SEAL AND SIGNATURE



Signature                      Chris D'Aeth  
Capacity                      Principal Registrar  
Date                              11 April 2018

If this document was issued by means of the Electronic Case Management System (ECM), pursuant to Part 3 of the Uniform Civil Procedure Rules (UCPR), this document is taken to have been signed if the person's name is printed where his or her signature would otherwise appear.

## FURTHER DETAILS ABOUT Plaintiff(s)

### First Plaintiff

Name                              Stephen Ernest Vaughan and Ian Richard Hall in their capacity as Liquidators of BBY Limited (Receivers and Managers Appointed)(In Liquidation) ACN 006 707 777

Address

Telephone

Fax

E-mail

Client reference

### Second Plaintiff

Name                              BBY Limited (Receivers and Managers Appointed)(In Liquidation) ACN 006 707 777

Address

Telephone

Fax

E-mail

Client reference

**Legal representative for plaintiffs**

Name EMANUEL JOHN POULOS  
Practicing certificate number 36117  
Address Level 11  
5 Martin Place  
SYDNEY NSW 2000  
DX address DX 388 Sydney NSW  
Telephone 02 9258 6000  
Fax 02 9258 6999  
Email emanuel.poulos@ashurst.com

**FURTHER DETAILS ABOUT Defendant(s)****First Defendant**

Name J Mazzetti Pty Ltd ATF J Mazetti Pty Limited Staff  
Superannuation Fund & ORS  
ACN 006705602  
Address Australian Tax Masters Level 1  
714 - 716 Glen Huntly Road  
CAULFIELD SOUTH VIC 3162

**Second Defendant**

Name Peter Brian Haywood and Bronwen Menai Haywood as trustees  
for the Haywood Superannuation Fund  
Address C/- Mills Oakley Lawyers Level 12  
400 George Street  
SYDNEY NSW 2000

**Third Defendant**

Name Clive Riseam  
Address

**Fourth Defendant**

Name Securities Exchanges Guarantee Corporation Limited  
Address 20 Bridge Street  
SYDNEY NSW 2000

**Fifth Defendant**

Name David Nadin  
Address C/- Arnold Bloch Leibler, Chifley Tower Level 24  
2 Chifley Square  
SYDNEY NSW 2000

**ATTACHMENTS TO ORDERS**

(BBY 2018 - Orders 05.04.18.pdf)  
(BBY 2018 - Orders 05.04.18.pdf)  
(BBY 2018 - Orders 05.04.18.pdf)

[attach.]

IN THE SUPREME COURT OF NEW SOUTH WALES  
DIVISION: EQUITY  
REGISTRY: SYDNEY  
CORPORATIONS LIST

No 237028 of 2015

IN THE MATTER OF BBY LIMITED (RECEIVERS & MANAGERS APPOINTED)(IN LIQUIDATION)

ACN 006 707 777

**STEPHEN ERNEST VAUGHAN AND IAN RICHARD HALL IN THEIR CAPACITY AS LIQUIDATORS  
OF BBY LIMITED (RECEIVERS AND MANAGERS APPOINTED)(IN LIQUIDATION)  
ACN 006 707 777**

First Plaintiff

**BBY LIMITED (RECEIVERS AND MANAGERS APPOINTED)(IN LIQUIDATION)  
ACN 006 707 777**

Second Plaintiff

**J MAZETTI PTY LTD ACN 006 705 602 AS TRUSTEE FOR  
J MAZETTI PTY LTD STAFF SUPERANNUATION FUND (AND OTHERS)**

Defendants

#### **SHORT MINUTES OF ORDER**

The Court orders and directs that:

#### **Pooling**

#### *Pooling of product line CSAs*

1. The Liquidators would be justified in proceeding on the footing that the Equities CSAs and the ETO CSAs should not be pooled with any other CSAs.
2. Any party who wishes to make a further written submission with respect to:
  - (a) whether any or all of the Saxo CSAs, Futures CSAs, FX CSAs and Other CSAs should be pooled; and/or
  - (b) whether the effect of any deposit or withdrawal transaction into or out of any of the Saxo CSAs, Futures CSAs, FX CSAs and Other CSAs should be reversed (except insofar as the amount paid into FX CSAs does not exceed the \$1 million used in the SCMA 1:1 upload),

may do so on or before 28 May 2018, any such written submissions to be no longer than 10 pages, and the matter be determined in Chambers unless otherwise directed.

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Filed on behalf of the plaintiffs

Prepared by:

**Ashurst Australia**

Lawyers

Level 11, 5 Martin Place

Sydney NSW 2000

DX: 388 Sydney

Tel: (02) 9258 6000

Fax: (02) 9258 6999

Ref: EP DGE 02 3003 4959

Attention: David Greenberg

### *Recoveries*

3. The Liquidators would be justified in:
  - (a) proceeding on the footing that the Recoveries from ADM and ABN Amro are held, on the s 981H trust, for the clients entitled to money in the Futures CSAs; and
  - (b) transferring any such Recoveries into Futures CSAs.
4. The Liquidators would be justified in:
  - (a) proceeding on the footing that the Recoveries from Halifax and from CMC Markets are held, on the s 981H trust, for the clients entitled to the money in the FX CSAs; and
  - (b) transferring any such Recoveries into FX CSAs.
5. The Liquidators would be justified in:
  - (a) proceeding on the footing that any Recoveries from Saxo Bank or SCMA is held on the s 981H trust for the clients entitled to money in the Saxo CSAs; and
  - (b) transferring any such Recoveries into Saxo CSAs.

### *Returned Collateral*

6. Subject to the entitlement of the plaintiffs to set off the amounts owed by any such clients who are debtors of BBY, the Liquidators would be justified in proceeding on the footing that the Returned Collateral was received by BBY on behalf of the ETO clients whose position it secured.

### **Calculation of entitlements**

7. Any party who wishes to make a further written submission with respect to the manner of or the date for calculation of client entitlements, to the intent that some date other than the date of appointment of administrators to BBY of 15 May 2015 should apply, may do so on or before 28 May 2018, any such written submissions to be no longer than 10 pages, and the matter be determined in Chambers unless otherwise directed.

### **Set-off**

8. Subject to Order 2 made on 5 December 2016, the Liquidators would be justified in proceeding on the footing that, in respect of the calculation of entitlements for the purposes of *Regulation 7.8.03* or otherwise, they are entitled to:
  - (a) combine the balances of product line accounts (being individual "Trading Accounts") to calculate the net position of individual clients, without any need for set-off; and/or
  - (b) set off positive net account balances against negative net account balances in all accounts owned by the same BBY client.

### **Low account balances**

9. The Liquidators would be justified in treating clients, in respect of client accounts with a balance of \$100 or less, as having no entitlement to participate in CSAs or Recoveries in respect of each such account.

**Interest**

10. The Liquidators would be justified in:

- (a) proceeding on the footing that interest earned on CSAs and Recoveries should be held for the benefit of the clients entitled to the relevant principal amount; and
- (b) transferring any such interest earned on Recoveries into the CSAs corresponding to the product line to which the Recoveries relate.

**Receivers' proceedings**

11. Any party who wishes to make a further written submission with respect to the Receiver Proceedings may do so on or before 28 May 2018, any such written submissions to be no longer than 10 pages and the matter be determined in Chambers unless otherwise directed.

**Further directions***Remuneration application*

12. In respect of the Liquidators' interlocutory process filed 8 August 2017:

- (a) on or before 26 April 2018, any defendant wishing to do so must file and serve any affidavits on which they intend to rely;
- (b) on or before 17 May 2018 the First Plaintiffs may file and serve any affidavits in reply on which they intend to rely;
- (c) any party wishing to be heard on the interlocutory process to file brief written submissions on or before 28 May 2018; and
- (d) the interlocutory process be listed for hearing before Brereton J at 9.45am on 22 June 2018.

*Process application – distribution of entitlements*

13. In respect of the Liquidators' interlocutory process filed 28 February 2018:

- (a) on or before 26 April 2018, any defendant wishing to do so must file and serve any affidavits on which they intend to rely;
- (b) on or before 17 May 2018 the Liquidators may file and serve any affidavits in reply on which they intend to rely; and
- (c) the interlocutory process be listed for hearing before Brereton J at 9.45am on 22 June 2018.

*Reallocation of costs among product lines*

14. On or before 20 April 2018, each Representative Party serve on all other parties:

- (a) notice of the quantum of any costs and disbursements incurred to date but not yet approved by the Court; and
- (b) an estimate of future costs to the finalisation of this proceeding.

15. On or before 4 May 2018, the Liquidators serve on all parties:

- (a) an updated version of the table attached to Ashurst's letter dated 2 December 2016 to Clayton Utz;
- (b) a breakdown of the current estimated total value of the assets (including CSAs, Recoveries associated with each product line, and any counterparty cash, stock and options or other derivatives referable to each product line); and
- (c) a model of each of the Alternative Cost Scenarios together with the calculations upon which each was based (which may be in *Excel* format).

16. On or before 17 May 2018, any defendant wishing to do so, file and serve any interlocutory process seeking to vary the Original Costs Orders and any supporting affidavits.

16A. On or before 24 May 2018, any other party may file and serve any affidavit evidence on which they intend to rely on the hearing of the interlocutory process.

17. On or before 28 May 2018, any party wishing to be heard on the interlocutory process to file brief written submissions.

18. The interlocutory process be listed for hearing before Brereton J at 9.45am on 22 June 2018.

*Liberty to apply*

19. Grants liberty to apply on 2 business days' notice.

20. Liberty to apply to the first defendant to vary or set aside these orders, such application to be made by email to the Associate to Brereton J and copied to all other parties within 7 days of the date of this order.

Note: Order 16 is not intended to limit the ability of any party to apply at a later stage to review the proportionality of the liquidators' claimed remuneration.

**Dated: 5 April 2018**

### **Definitions**

In these Orders:

*Alternative Cost Scenarios* means the following possible costs, disbursements and remuneration sharing scenarios:

- (a) the product lines bear the Representative Parties' costs and expenses and the Liquidators' costs, expenses and remuneration on a pari passu basis (calculated by reference to the value of assets held by each product line);
- (aa) the product lines bear the Representative Parties' costs and expenses and the Liquidators' costs, expenses and remuneration on a pari passu basis (calculated by reference to the quantum of client claims in each product line); and
- (b) each product line bears its own Representative Party's costs and:

- (i) the Liquidator's costs, expenses and remuneration on a pari passu basis by reference to the quantum of client claims; or
- (ii) the Liquidator's costs, expenses and remuneration on a pari passu basis by reference to the value of assets held by each product line.

CSA or CSAs means the following bank accounts:

CSA Tables

BBY NAB CSAs AUD			
Account Name	Product Line	Account Number	Currency
BBY Equities Trust Ac	Equities	083-004 12-407-8694	AUD
SAXO Capital Markets Trust Acc	Saxo	084-004 90-438-4895	AUD
BBY LTD ADM Trust Account	Futures	084-004 90-434-4973	AUD
BBY Limited Trust Ac1	Other	082-057 16-913-3546	AUD
BBY LTD CMC Markets	Futures	084-004 92-218-6577	AUD
BBY Limited Trust Ac2	Other	082-057 16-665-5330	AUD
BBY Ltd Admin Apptd RM Appt	ETO	084-004 24-835-6043	AUD
BBY Limited Trust Ac3	Other	082-057 16-665-5349	AUD
BBY Ltd Client Trust Account	Equities	000 0553 452 541	AUD
BBY Ltd Carbon Trading Corp A/c	Carbon	000 0553 486 047	AUD
BBY Limited - WLP Omnibus	Saxo	000 0553 619 137	AUD
BBY Ltd Trust Ac1	Other	000 0553 619 153	AUD
BBY Ltd Trust Ac3	Other	000 0553 619 217	AUD
BBY Ltd FX Trust	FX	000 0553 619 268	AUD



BBY NAB CSAs AUD			
Account Name	Product Line	Account Number	Currency
BBY Ltd Futures Client Seg	Futures	000 0553 619 284	AUD
BBY Ltd Futures House	Futures	000 0553 619 305	AUD
BBY Ltd IB Buffer	IB	000 0553 619 321	AUD
BBY Ltd Saxo Buffer	Saxo	000 0553 619 356	AUD
General trust account	Other	000 0553 980 002	AUD
EW Client Claims	ETO	000 0554 687 465	AUD
ED Client Claims	Equities	000 0554 687 473	AUD

BBY NAB CSAs Foreign Currency			
Account Name	Product Line	Account Number	Currency
BBY NZ IB eBridge	IB	BBYLRNZD06	NZD
BBYL NZ FX	FX	BBYLRNZD04	NZD
BBY NZ IB	IB	BBYLRNZD07	NZD
BBYL NZ WLP	Saxo	BBYLRNZD05	NZD
BBY NZ Futures	Futures	BBYLRNZD03	NZD
BBYL NZ Equities	Equities	BBYLRNZD02	NZD

*BBY* means the Second Plaintiff.

*Equities CSAs* means any and all of the CSAs in the Equities product line as shown in the tables in the definition of CSA above.

*ETO clients* means BBY clients with open positions as at 15 May 2015 on exchange-traded financial products, being those BBY clients represented by the First Defendant.

*ETO CSAs* means any and all of the CSAs in the ETO product line as shown in the tables in the definition of CSA above.

*Futures CSAs* means any and all of the CSAs in the Futures product line as shown in the tables in the definition of CSA above.

*FX CSAs* means any and all of the CSAs in the FX product line as shown in the tables in the definition of CSA above.

*Liquidators* means the First Plaintiffs or any of them, including any person appointed as liquidator upon the retirement of one or more of them.

*Other CSAs* means any and all of the CSAs in the Other product line as shown in the tables in the definition of CSA above.

*Original Costs Orders* means the Orders made 19 October 2015 in respect of the regime for the approval and payments of:

- (a) the representative parties' costs and expenses of this proceeding; and
- (b) the Liquidators' costs, expenses and remuneration and BBY's costs and expenses of this proceeding and in administering the CSAs and recovering and attempting to recover the Recoveries,

as amended by Orders made on 23 February 2016 with respect to the fifth defendant and Orders made on 19 May 2016 with respect to the Representative Parties and the Liquidators.

*Receivers* means Mr Brett Lord and Mr Stephen Parbery as receivers and managers of BBY and, following the retirement of Mr Lord, Mr Mark Robinson.

*Receiver Proceedings* means Supreme Court of New South Wales proceedings no 2016/77316 commenced by Originating Process dated 10 March 2016, filed 11 March 2016 by the Receivers and BBY as plaintiffs.

*Recoveries* means any monies received, or to be received, by BBY or the Liquidators from any person after the date of the appointment of administrators to BBY which relate to client positions, including without limitation, pursuant to arrangements with clearing houses, hedge counterparties or other financial service providers.

*Representative Parties* means the defendants other than the fourth defendant and a *Representative Party* is one of the defendants other than the fourth defendant.

*Returned Collateral* means the sum of \$3,400,115 referred to in paragraph 36(b) of the affidavit of Stephen Ernest Vaughan made 2 October 2015.

*Saxo CSAs* means any and all of the CSAs in the Saxo product line as shown in the tables in the definition of CSA above.

*SCMA* means Saxo Capital Markets Australia.

*SCMA 1:1 upload* means the process described at paragraphs [255] to [257] in *In the matter of BBY Limited (Receivers and Managers Appointed) (in liquidation) (No 2)* [2018] NSWSC 346 and the payments made by the Second Plaintiff to SCMA as part of that process.

A reference to a *Regulation* is a reference to a regulation of the *Corporations Regulations 2001*.