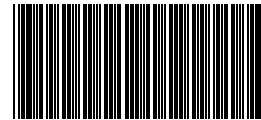




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Written Submissions

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	4

FILING DETAILS

Filed for	Peter Brian Haywood and Bronwen Menai Haywood as trustees for the Haywood Superannuation Fund, Defendant 2
Legal representative	Ariel Borland
Legal representative reference	
Telephone	(03) 9605 0015
Your reference	5457184

ATTACHMENT DETAILS

In accordance with Part 3 of the UCPR, this coversheet confirms that both the Lodge Document, along with any other documents listed below, were filed by the Court.

Written Submissions (160803 - Summary of Contentions.pdf)

[attach.]

Form 1
UCPR**SUMMARY OF CONTENTIONS****COURT DETAILS**

Court	Supreme Court of NSW
Division	Equity
List	Corporations List
Registry	Supreme Court Sydney
Case number	2015/237028

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)
Defendants	J Mazzetti Pty Ltd (ACN 006 705 602) as trustee for J Mazzetti Pty Ltd Staff Superannuation Fund and others according to the attached schedule

FILING DETAILS

Filed for	Peter Brian Haywood and Bronwen Menai Haywood as trustees for the Haywood Superannuation Fund (ABN 19 554 378 088), Second Defendants
Legal representative	Nirupa Manoharan, Mills Oakley
Legal representative reference	5457184
Contact name and telephone	Nirupa Manoharan, (03) 9605 0808
Contact email	nmanoharan@millsoakley.com.au

SIGNATURE

Signature of legal representative	
Capacity	Solicitor
Date of signature	3 August 2016

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

No. 237028/2015

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

SECOND DEFENDANTS' SUMMARY OF CONTENTIONS

1. This summary of contentions is provided in accordance with the orders made by Brereton J on 20 July 2016.
2. The second defendants to proceeding no. 2015/237028 represent all clients of BBY Limited (Receivers and Managers appointed) (In Liquidation) (**BBY**) with an equities account (**Equities**) and all clients of BBY with an ETO account without an open position as at 15 May 2015 (**ETOs**).
3. This document summarises the second defendants' position about the 'pooling' of funds held in BBY's Client Segregated Accounts (**CSAs**). It does not consider each of the other issues identified in the liquidators' summary of contentions served on 2 August 2016. If necessary, the second defendants will address those issues in reply. Nor do the second defendants restate their position about the receivers' application, which is set out in the second defendants' Statement of Facts and Contentions in Reply filed in proceeding no. 2016/77316 on 27 May 2016.

Pooling within product lines

4. It appears uncontroversial that BBY operated through discrete product lines.¹ In particular:
 - (a) Clients of BBY nominated the product line(s) in which they wished to trade and completed a client application form that specified the terms and conditions and product disclosure statements which applied to trading in each product line.²
 - (b) BBY's bank accounts were (subject to the combination of client monies for the Equities and ETOs product lines) designated to correspond to particular product lines.³

¹ Affidavit of Stephen Vaughan affirmed 23 December 2015 ('*Vaughan Affidavit*'), [43].

² *Vaughan Affidavit*, [60].

³ *Vaughan Affidavit*, [52]-[55].

- (c) BBY utilised separate accounting software to manage its client accounts for each product line.⁴ Accordingly, aside from the interaction between GBST Shares (for Equities) and GBST DCA (for ETOs),⁵ there appears to have been little or no interaction between the software systems used by BBY to manage its client accounts; and BBY clients who traded in multiple product lines were generally assigned different client account numbers in the accounting software for each product line.⁶
- (d) Clients' claims to funds held in respect of each product line are recorded in a specific document or system that takes a different form for each product line.⁷
5. Where the liquidators are unable to determine individual client entitlements within specific product lines, it is generally appropriate for the Court to make 'pooling' type orders within product lines.⁸

Pooling within the Equities/ETO product line

6. The liquidators state that:
- (a) it is difficult, if not impossible, to identify money in any particular CSA as belonging to any individual client;⁹
- (b) it would be an extremely time consuming and expensive exercise to identify and trace funds deposited by each client into each individual CSA;¹⁰ and
- (c) it is difficult, if not impossible, to definitively identify the client or clients in respect of whom payments were made out of, or into, particular CSAs.¹¹
7. For this reason, and in light of the daily mixing of Equities and ETOs client monies prior to January 2015 and their permanent combination from March 2015,¹² it is appropriate for the funds in the CSAs corresponding to the Equities/ETO product lines to be 'pooled'.¹³
8. On the basis of the liquidators' calculations on page 68 of the Supplementary CSA Report there are at least sufficient funds in the Equities/ETO CSAs to meet all client

⁴ Vaughan Affidavit, [63].

⁵ Described in paragraph [221-222] of the Vaughan Affidavit.

⁶ Vaughan Affidavit, [65].

⁷ Vaughan Affidavit, [76], [89], [96], [105], [110], [115].

⁸ *In Re MF Global Australia Ltd (in liq)* [2012] NSWSC 994 at [44]-[54].

⁹ Vaughan Affidavit, [259].

¹⁰ Vaughan Affidavit, [263].

¹¹ Vaughan Affidavit, [264].

¹² Vaughan Affidavit, [55].

¹³ *In Re MF Global Australia Ltd (in liq)* [2012] NSWSC 994 at [54] citing Gordon J's observation in *Georges (in his capacity as joint and several liquidator of Sonray Capital Markets Pty Ltd (in liq) v Seaborn International* (2012) 87 ACSR 441 at [85].

claims across these product lines. Any deficiency (for example because of costs or a successful claim by another product line) should be borne *pro rata* by the Equities/ETO clients.

Pooling of the Equities/ETO product line with other product lines

9. The liquidators' analysis does not provide a basis for any order for the pooling of funds held in the Equities/ETO CSAs with funds held in the CSAs of other product lines.
10. It is evident that:
 - (a) The daily operation of the Equities and ETOs business was highly regulated and subject to the scrutiny of the ASX. The ASX had specific oversight of the Equities/ETO CSAs from early 2015. Furthermore, the trust reports generated from the GBST Shares system were vetted on a quarterly basis by the BBY Operations Team to ensure accuracy.¹⁴
 - (b) At the time of the appointment of the (then) administrators to BBY, the Equities/ETO trust reconciliation process appeared to be operating effectively; the liquidators state they were advised by former BBY employees that there were no historical issues with the reconciliation of the Equities/ETO client trust account.¹⁵
 - (c) The liquidators state that it is only for the Equities/ETO product line that they have been able to identify any process or record which constitutes a reliable reconciliation of the contributions and withdrawals in respect of clients and the amounts held in particular CSAs.¹⁶
 - (d) It appears that the reconciliation of the Equities and ETO product lines by the BBY Operations Team was comprehensive whereas the accounting records used to conduct the trust account reconciliation by the BBY Finance team for other product lines was inaccurate.¹⁷
11. The records for the Equities/ETO product line have enabled the liquidators to create the 'Adjusted BBY Funding ledger'¹⁸ which analyses the net effect of the 'Equities/ETO Funding Transactions' in the period from 2 December 2011 (being the commencement of BBY's self-clearing obligations) to 17 May 2015.¹⁹ The 'Equities/ETO Funding

¹⁴ Client monies investigations liquidators' report dated 22 December 2015 ('CSA Report'), 3.2.4.

¹⁵ CSA Report, 3.2.4.

¹⁶ Vaughan Affidavit, [261]-[262].

¹⁷ CSA Report, 4.2.

¹⁸ Appendix 5.7 to the Client monies investigations liquidators' supplementary report dated 15 June 2016 ('Supplementary Report').

¹⁹ Supplementary Report, page 8.

Transactions' represent the movement of funds between a variety of BBY bank accounts and the Equities/ETO CSAs or house accounts used for the Equities/ETO business.²⁰

12. Although the ledger is not put forward by the liquidators as a perfect record (being checked, for completeness, on a sample basis only) each of the 'transactions of interest'²¹ identified by the liquidators in their CSA Report that relates to the Equities/ETO product line, and were not considered business as usual, are contained within this ledger.
13. All but 16 of the transactions within the Adjusted BBY Funding ledger net to nil.²² The liquidators identify 4 possible balances for the ledger as at 17 May 2015 depending upon which of those non-netting transactions are ultimately included in it.²³ For the reasons identified by the liquidators at page 38 of the Supplementary CSA Report, none of these potential balances equates to the actual quantum of the surplus of funds held in the Equities/ETO CSAs (as at 29 April 2016). This accords with the liquidators' expectations.
14. Whatever the correct balance of the Adjusted BBY Funding ledger,²⁴ and whatever anomalies are contained within it, the ledger does not reveal any basis for the pooling of the funds in other product lines' CSAs with those in the Equities/ETO CSAs. Even if particular amounts were used for Equities/ETO business purposes and those amounts are not recorded in the Adjusted BBY Funding ledger as having been netted to nil, it is not established that the funds used were trust monies, or that there was any breach of trust or mixing of trust funds. The onus, in this regard, is upon any party who seeks to establish a claim against funds in the Equities/ETO CSAs and the second defendants will respond as appropriate in reply.

Dated: 3 August 2016

Peter Brereton

Vanessa Whittaker

Counsel for the second defendants

²⁰ Supplementary Report, 5.1.1.

²¹ As set out in section 6.4 to 6.7 of the CSA Report

²² CSA Report p. 36 and appendix 5.10

²³ CSA Report p. 37

²⁴ The second defendants have foreshadowed potentially obtaining expert assistance about this issue.

SCHEDULE OF PARTIES

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 Plaintiffs

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

Second Plaintiff

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

First Defendants

PETER BRIAN HAYWOOD AND BRONWEN MENAI HAYWOOD AS TRUSTEES FOR THE HAYWOOD SUPERANNUATION FUND ABN 19 554 378 088

Second Defendants

CLIVE RISEAM

Third Defendant

SECURITIES EXCHANGES GUARANTEE CORPORATION LIMITED (ACN 008 626 793)

Fourth Defendant

DAVID NADIN

Fifth Defendant