

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

AND

OTHERS

**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 AND
OTHERS**

First Plaintiff

**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

FILED

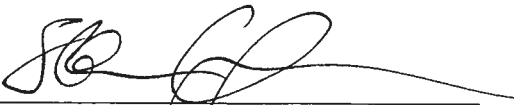
8 OCT 2015

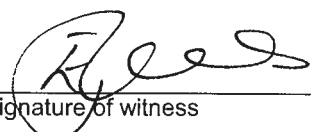


AFFIDAVIT

On 8 October 2015, I, Stephen Ernest Vaughan of 10 Shelley Street, Sydney in the State of New South Wales, Official and Registered Liquidator, affirm:

1. I am one of the joint and several liquidators of the Second Plaintiff (**BBYL**), together with my fellow liquidator Ian Hall, and am authorised to make this affidavit on behalf of Mr Hall and BBYL.
2. I am a Director of the accounting firm KPMG and work out of the Sydney office of KPMG.
3. I have affirmed this affidavit in response to the First Defendants' Interlocutory Process dated 17 September 2015 (**Defendants' Interlocutory Process**).


Signature of deponent


Signature of witness

Filed on behalf of the plaintiffs
Prepared by:
Ashurst Australia
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Attention: Ryan Zahrai

4. Capitalised terms used in this affidavit have the meaning given to those terms in the glossary annexed to this affidavit and marked with the letter "A", unless otherwise defined in the body of this affidavit.
5. I refer to my affidavit affirmed on 13 August 2015 and filed these proceedings (**First Affidavit**).
6. The information outlined below is based upon the investigations which have been undertaken by and on behalf of Mr Hall and me as the voluntary administrators, and now liquidators of some of the companies in the BBY Group.
7. I make this affidavit based on my own knowledge, information and belief or from information that I have obtained through acting as one the voluntary administrators and now liquidators of companies in the BBY Group.
8. Shown to me at the time of affirming this affidavit is a folder of documents marked exhibit SV-3 (**Exhibit SV-3**). References by me to page numbers throughout this affidavit are to page numbers of Exhibit SV-3 unless indicated otherwise.

Proposed Direction 1

9. I refer to paragraph 1 of the Defendants' Interlocutory Process.
10. As outlined in paragraphs 19 to 23 of my affidavit affirmed on 2 October 2015 and filed in this proceeding (**Fourth Affidavit**), the First Defendants alleged that a potential conflict of interest arises between Equities Clients and ETO Clients (**Alleged Conflict**).
11. Absent the Alleged Conflict, a single representative defendant could potentially be appointed to represent the interests of both Equities Clients and ETO Clients (**Surplus Clients**).
12. Given the Alleged Conflict raised by the First Defendants, the Liquidators proposed, as a way forward, that separate representative defendants be appointed to represent Equities Clients and ETO Clients respectively.
13. As noted in paragraph 33 and 34 of my Fourth Affidavit, Securities Exchanges Guarantee Corporation (**SEGC**) has, through its solicitors, informed my solicitors in its letter dated 1 October 2015, a copy of which appears at pages 4 to 17 of Exhibit SV-2 to my Fourth Affidavit (**SEGC Letter**), that it intends to be added as a defendant to the proceedings to assist the Surplus Clients with advancing relevant submissions. The SEGC is the trustee of the National Guarantee Fund (**NGF**), which is a compensation fund available to meet certain classes of claims which arise from dealings with participants of ASX. Exhibited at pages 1 to 52 is a copy of the SEGC annual report for 2014.



14. In the SEGC Letter, SEGC states that it has a material interest in these proceedings because, among other things, if the Court were to make a direction or declaration that the Liquidators should pool all (or some) of the CSAs, it is possible that Equities Clients or ETO Clients who could have been paid in full from the funds held in CSAs might, as a result of the direction or declaration, not receive payment in full and could become entitled to claim against the NGF for the shortfall amount.
15. Also, in the SEGC Letter, SEGC states that:
- (a) it seeks to be added as a defendant to ensure that if either of the appointed representatives for Equities Clients and ETO Clients do not put relevant submissions before the court, SEGC can make those additional submissions;
 - (b) as a (non-representative) defendant, SEGC will bear its own costs of the proceedings and, unlike the representative defendants, will not seek to be indemnified from the CSAs; and
 - (c) if the Court is minded to appoint SEGC to represent the interests of either or both of the Equities Clients and ETO Clients, then SEGC would consent to that order and fulfil that role.
16. Costs savings may result if SEGC is appointed in respect of both Equities Clients and ETO Clients or SEGC agreed to bear its own costs of acting in a representative capacity. Any costs sought to be recouped from the CSAs referable to Equities Clients and ETO Clients by SEGC for its costs of the proceedings may increase the quantum of claims of such clients against the NGF. Accordingly, SEGC would likely have to simply pay back any money it had recouped from those CSAs as compensation to Equities Clients and ETO Clients.

Proposed Direction 2

17. I refer to paragraph 2 of the Defendants' Interlocutory Process.
18. If the Court is not minded to appoint SEGC as a representative defendant, in the terms described in paragraph 15 above, then, for the reasons outlined in paragraphs 14 to 23 of my Fourth Affidavit, the Liquidators consider that the First Defendant, J Mazzetti Pty Ltd ACN 006 705 602 as Trustee for J Mazzetti Pty Ltd Staff Superannuation Fund (**Mazzetti**), could be appointed as a representative defendant to represent all ETO Clients.

Proposed Direction 3

19. I refer to paragraph 3(a) of the Defendants' Interlocutory Process.
20. The Liquidators' have in their possession a ledger which contains consolidated details of Equities Clients and ETO Clients who had an entitlement against CSAs as at 15 May 2015 (**Equities/ETO**



Ledger). This is in the form of an excel spreadsheet which is quite voluminous. The Liquidators are able to provide a relevant extract of that ledger if requested by the defendants.

21. The Liquidators do not have specific details of any demands for payment made by BBYL issued to ETO Clients for outstanding liabilities as at 15 May 2015. However, the Receivers have informed me that they have taken steps to recover debts owed to BBYL.
22. I refer to paragraph 3(b) of the Defendants' Interlocutory Process.
23. The Liquidators are not aware of what is meant by "audit packs" referred to in paragraph 3(b) of the Defendants' Interlocutory Process.
24. As referred to in paragraph 20, the Liquidators have located the Equities/ETO Ledger.

Proposed Direction 4

25. I refer to paragraph 4 of the Defendants' Interlocutory Process.
26. Exhibited at pages 53 to 92 is a report showing both cash and equity collateral held with the ASX as at 15 May 2015. The Liquidators have obtained this information from the ASX. The collateral report totals to \$193,253,154.56, comprised of \$1,450,000.00 in bank guarantees, \$21,991,046.56 in cash collateral and \$169,812,108.00 in shares.
27. Exhibited at pages 93 to 157 is a report showing open positions for all ETO Clients as at 15 May 2015. The Liquidators obtained this information from ASX.

Proposed Direction 5

28. I refer to paragraph 5 of the Defendants' Interlocutory Process.
29. The Liquidators did not withdraw any amounts from bank accounts of ETO Clients held at financial institutions external to BBYL using BBYL's third party authorities. Amounts were withdrawn automatically from such accounts. The relevant systems through which these withdrawals occurred are under the control of the Receivers and not the Liquidators.
30. Exhibited at pages 158 to 161 is a copy of a report produced by the Liquidators providing particulars of the accounts from which funds were withdrawn. The amount withdrawn totals \$2,410,066.47. These funds relate to margin calls made on ETO Clients' accounts, post the ASX suspension of BBYL's participation on the markets on 18 May 2015. This resulted in the withdrawal of funds from client bank accounts to a CSA maintained by BBYL.



31. The figures in the "Amount" column of the report represent the amount of funds, in Australian dollars, drawn from client bank accounts.

AFFIRMED at

Sydney

Signature of deponent



Name of witness

EMANUEL POULOS

Address of witness

Level 11, 5 Martin Place, Sydney

Capacity of witness

Solicitor

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

- 1 I saw the face of the deponent.
- 2 I have known the deponent for over 12 months

Signature of witness



[Signature]
Justice of the Peace / Lawyer

ANNEXURE A

Definitions

- ASX** means the Australian Securities Exchange.
- BBY Group** means each of:
- (a) BBY Limited (in Liquidation) (Receivers and Managers Appointed) ACN 006 707 777 (**BBYL**);
 - (b) BBY Holdings Pty Ltd (in Liquidation) (Receivers and Managers Appointed) ACN 075 187 432 (**BBY Holdings**);
 - (c) Broker Services Australia Pty Limited (in Liquidation) ACN 074 976 364 (**BSA**);
 - (d) BBY Advisory Services Pty Limited (in Liquidation)(Receivers and Managers Appointed) ACN 102 761 008 (**BBY Advisory**);
 - (e) SmarTrader Limited (Subject to Deed of Company Arrangement) ACN 115 752 102 (**SmarTrader**);
 - (f) BBY HomeTrader Pty Ltd (Subject to Deed of Company Arrangement) ACN 134 838 207 (**HomeTrader**);
 - (g) BBY Nominees Pty Ltd (Administrators Appointed) ACN 007 001 443 (**BBY Nominees**);
 - (h) BBY Protection Nominees Pty Limited (Administrators Appointed) ACN 007 001 710 (**Protection Nominees**);
 - (i) Tilbia Nominees Pty Ltd (Administrators Appointed) ACN 007 001 578 (**Tilbia**); and
 - (j) Options Research Pty Ltd (Administrators Appointed) ACN 006 770 627 (**Options Research**).
- Client Segregated Accounts / CSAs** means the bank accounts maintained by the BBY Group pursuant to Part 7.8 of the *Corporations Act* 2001 (Cth) being each of the 47 client

segregated accounts of BBYL identified in paragraph 37 of the affidavit of Stephen Ernest Vaughan sworn on 2 October 2015.

Equities Account	means an account with BBYL established in connection with exchange traded equities such as shares and listed units.
Equities Clients	means all clients of BBYL who hold Equities Accounts.
ETO Account	means an account with BBYL established in connection with exchange traded options.
ETO Clients	means all clients of BBYL who hold ETO Accounts.
Futures Account	means an account with BBYL established in connection with exchange traded futures contracts and futures options.
Futures Clients	means all clients of BBYL who hold Futures Accounts.
FX Account	means an account with BBYL established in connection with over-the-counter products comprising foreign exchange contracts.
FX Clients	means all clients of BBYL who hold FX Accounts.
Liquidators	means the First Plaintiffs.
Other Products Account	means an account with BBYL established in connection with miscellaneous financial products, including carbon trading.
Other Products Clients	means all clients of BBYL who hold Other Products Accounts.
Product Line	means each of the classes of financial products provided by BBYL to its clients referable to an ETO Account, Equities Account, Futures Account, Saxo Account or Other Products Account.
Saxo Account	means an account with BBYL established in connection with financial products offered by Saxo Capital Markets.
Saxo Clients	means all clients of BBYL who hold Saxo Accounts.