



Issued: 12 October 2016 7:15 PM

## 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<br>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 | 12 October 2016 |
| Date entered       | 12 October 2016 |

### TERMS OF JUDGMENT/ORDER

NOTE document entitled Short Minutes of Order (as amended) initialled by me, dated this day & placed with the papers.

THE COURT:

1. Orders that the First Plaintiffs would be justified, in the case of the Erroneous Withdrawals and Post-appointment Erroneous Deposits, in treating clients, in respect of payments of \$100 or less, as having no entitlement to receive a distribution in respect of that payment.

2. Orders that the First Plaintiffs:

(a) are justified in converting into Australian dollars (if necessary) and paying Post-appointment Erroneous Deposits from the CSAs into which they were received to a separate trust account established by the liquidators for the purpose of distributing those amounts (the ED Distribution Account) after deduction of a proportionate amount of the costs, expenses and remuneration paid, approved to be paid or payable from the relevant CSA (at the time of payment into the ED Distribution Account) in accordance with the orders made in this proceeding;

(b) pay Erroneous Withdrawals from the CSA into which they were received to a separate trust account established by the liquidators for the purpose of distributing those amounts (the EW Distribution Account) after deduction of a proportionate amount of the costs, expenses and remuneration paid, approved to be paid or payable from them (at the time of payment into the EW Distribution Account) in accordance with the orders made in this proceeding.

3. Orders that the liquidators' remuneration, costs and expenses, and BBYL's costs and expenses, reasonably incurred in connection with:

- (a) distributing the Post-appointment Erroneous Deposits, be paid out of the ED Distribution Account on an indemnity basis in accordance with order 4;
- (b) distributing the Erroneous Withdrawals, be paid out of the EW Distribution Account on an indemnity basis in accordance with order 4.
4. For the purpose of order 3, the matter be referred to a Registrar for examination and approval of the liquidators' remuneration, costs and expenses and BBYL's costs and expenses, and the Registrar's decision be subject to review in the same manner as a Registrar's decision approving the remuneration of a liquidator.
5. Orders that the plaintiffs are justified in paying the liquidators' remuneration, costs and expenses, and BBYL's costs and expenses in connection with:
- (a) distributing the Post-appointment Erroneous Deposits, as determined in accordance with order 4, from the ED Distribution Account;
- (b) distributing the Erroneous Withdrawals, as determined in accordance with order 4, from the EW Distribution Account.
6. Orders that the First Plaintiffs:
- (a) are justified in paying Post-appointment Erroneous Deposits from the ED Distribution Account to the clients from whom the Post-appointment Erroneous Deposits were received, after deduction of a proportionate amount of the costs, expenses and remuneration paid or approved to be paid from the ED Distribution Account in accordance with orders 3 and 4 above;
- (b) pay Erroneous Withdrawals from the EW Distribution Account to the clients from whom the Erroneous Withdrawals were received, after deduction of a proportionate amount of the costs, expenses and remuneration paid or approved to be paid from the EW Distribution Account in accordance with orders 3 and 4 above.
7. Reserves any further question as to inter-partes costs of the separate question.
8. Grants liberty to apply on three days' notice.

Definitions:

In these orders:

CSA means any of the 47 client segregated accounts of the Second Plaintiff identified in paragraph 37 of the affidavit of Stephen Ernest Vaughan affirmed on 2 October 2015.

Erroneous Withdrawals means the amounts described as "invalid margin calls" in the reconciliation commencing on page 64 of Confidential Exhibit BL-2 to the affidavit of Brett Lord affirmed on 9 March 2016, totalling \$2,396,157.41.

Post-appointment Erroneous Deposits means any payment made by or on behalf of clients, received into a CSA of the Second Plaintiff on or after 18 May 2015, where the purpose for which the payment was made failed, but excluding the Erroneous Withdrawals.

THE COURT FURTHER NOTES THAT order 2 (b) is made without prejudice to the right of the first defendants to apply if so advised to vary the current costs regime, to the effect that the erroneous withdrawals be exonerated from liability for the liquidators' costs.

Proceedings are adjourned to 9 November 2016 for pre-trial directions.

NOTE document entitled Short Minutes of Order (as amended) initialled by me, dated this day & placed with the papers.

THE COURT:

1. Orders that the First Plaintiffs would be justified, in the case of the Erroneous Withdrawals and Post-appointment Erroneous Deposits, in treating clients, in respect of payments of \$100 or less, as having no entitlement to receive a distribution in respect of that payment.
2. Orders that the First Plaintiffs:
  - (a) are justified in converting into Australian dollars (if necessary) and paying Post-appointment Erroneous Deposits from the CSAs into which they were received to a separate trust account established by the liquidators for the purpose of distributing those amounts (the ED Distribution Account) after deduction of a proportionate amount of the costs, expenses and remuneration paid, approved to be paid or payable from the relevant CSA (at the time of payment into the ED Distribution Account) in accordance with the orders made in this proceeding;
  - (b) pay Erroneous Withdrawals from the CSA into which they were received to a separate trust account established by the liquidators for the purpose of distributing those amounts (the EW Distribution Account) after deduction of a proportionate amount of the costs, expenses and remuneration paid, approved to be paid or payable from them (at the time of payment into the EW Distribution Account) in accordance with the orders made in this proceeding.

3. Orders that the liquidators' remuneration, costs and expenses, and BBYL's costs and expenses, reasonably incurred in connection with:
  - (a) distributing the Post-appointment Erroneous Deposits, be paid out of the ED Distribution Account on an indemnity basis in accordance with order 4;
  - (b) distributing the Erroneous Withdrawals, be paid out of the EW Distribution Account on an indemnity basis in accordance with order 4.
4. For the purpose of order 3, the matter be referred to a Registrar for examination and approval of the liquidators' remuneration, costs and expenses and BBYL's costs and expenses, and the Registrar's decision be subject to review in the same manner as a Registrar's decision approving the remuneration of a liquidator.
5. Orders that the plaintiffs are justified in paying the liquidators' remuneration, costs and expenses, and BBYL's costs and expenses in connection with:
  - (a) distributing the Post-appointment Erroneous Deposits, as determined in accordance with order 4, from the ED Distribution Account;
  - (b) distributing the Erroneous Withdrawals, as determined in accordance with order 4, from the EW Distribution Account.
6. Orders that the First Plaintiffs:
  - (a) are justified in paying Post-appointment Erroneous Deposits from the ED Distribution Account to the clients from whom the Post-appointment Erroneous Deposits were received, after deduction of a proportionate amount of the costs, expenses and remuneration paid or approved to be paid from the ED Distribution Account in accordance with orders 3 and 4 above;
  - (b) pay Erroneous Withdrawals from the EW Distribution Account to the clients from whom the Erroneous Withdrawals were received, after deduction of a proportionate amount of the costs, expenses and remuneration paid or approved to be paid from the EW Distribution Account in accordance with orders 3 and 4 above.
7. Reserves any further question as to inter-partes costs of the separate question.
8. Grants liberty to apply on three days' notice.

Definitions:

In these orders:

CSA means any of the 47 client segregated accounts of the Second Plaintiff identified in paragraph 37 of the affidavit of Stephen Ernest Vaughan affirmed on 2 October 2015.

Erroneous Withdrawals means the amounts described as "invalid margin calls" in the reconciliation commencing on page 64 of Confidential Exhibit BL-2 to the affidavit of Brett Lord affirmed on 9 March 2016, totalling \$2,396,157.41.

Post-appointment Erroneous Deposits means any payment made by or on behalf of clients, received into a CSA of the Second Plaintiff on or after 18 May 2015, where the purpose for which the payment was made failed, but excluding the Erroneous Withdrawals.

THE COURT FURTHER NOTES THAT order 2 (b) is made without prejudice to the right of the first defendants to apply if so advised to vary the current costs regime, to the effect that the erroneous withdrawals be exonerated from liability for the liquidators' costs.

Proceedings are adjourned to 9 November 2016 for pre-trial directions.

NOTE document entitled Short Minutes of Order (as amended) initialled by me, dated this day & placed with the papers.

THE COURT:

1. Orders that the First Plaintiffs would be justified, in the case of the Erroneous Withdrawals and Post-appointment Erroneous Deposits, in treating clients, in respect of payments of \$100 or less, as having no entitlement to receive a distribution in respect of that payment.
2. Orders that the First Plaintiffs:
  - (a) are justified in converting into Australian dollars (if necessary) and paying Post-appointment Erroneous Deposits from the CSAs into which they were received to a separate trust account established by the liquidators for the purpose of distributing those amounts (the ED Distribution Account) after deduction of a proportionate amount of the costs, expenses and remuneration paid, approved to be paid or payable from the relevant CSA (at the time of payment into the ED Distribution Account) in accordance with the orders made in this proceeding;
  - (b) pay Erroneous Withdrawals from the CSA into which they were received to a separate trust account established by the liquidators for the purpose of distributing those amounts (the EW Distribution Account) after deduction of a proportionate amount of the costs, expenses and

remuneration paid, approved to be paid or payable from them (at the time of payment into the EW Distribution Account) in accordance with the orders made in this proceeding.

3. Orders that the liquidators' remuneration, costs and expenses, and BBYL's costs and expenses, reasonably incurred in connection with:

(a) distributing the Post-appointment Erroneous Deposits, be paid out of the ED Distribution Account on an indemnity basis in accordance with order 4;

(b) distributing the Erroneous Withdrawals, be paid out of the EW Distribution Account on an indemnity basis in accordance with order 4.

4. For the purpose of order 3, the matter be referred to a Registrar for examination and approval of the liquidators' remuneration, costs and expenses and BBYL's costs and expenses, and the Registrar's decision be subject to review in the same manner as a Registrar's decision approving the remuneration of a liquidator.

5. Orders that the plaintiffs are justified in paying the liquidators' remuneration, costs and expenses, and BBYL's costs and expenses in connection with:

(a) distributing the Post-appointment Erroneous Deposits, as determined in accordance with order 4, from the ED Distribution Account;

(b) distributing the Erroneous Withdrawals, as determined in accordance with order 4, from the EW Distribution Account.

6. Orders that the First Plaintiffs:

(a) are justified in paying Post-appointment Erroneous Deposits from the ED Distribution Account to the clients from whom the Post-appointment Erroneous Deposits were received, after deduction of a proportionate amount of the costs, expenses and remuneration paid or approved to be paid from the ED Distribution Account in accordance with orders 3 and 4 above;

(b) pay Erroneous Withdrawals from the EW Distribution Account to the clients from whom the Erroneous Withdrawals were received, after deduction of a proportionate amount of the costs, expenses and remuneration paid or approved to be paid from the EW Distribution Account in accordance with orders 3 and 4 above.

7. Reserves any further question as to inter-partes costs of the separate question.

8. Grants liberty to apply on three days' notice.

Definitions:

In these orders:

CSA means any of the 47 client segregated accounts of the Second Plaintiff identified in paragraph 37 of the affidavit of Stephen Ernest Vaughan affirmed on 2 October 2015.

Erroneous Withdrawals means the amounts described as "invalid margin calls" in the reconciliation commencing on page 64 of Confidential Exhibit BL-2 to the affidavit of Brett Lord affirmed on 9 March 2016, totalling \$2,396,157.41.

Post-appointment Erroneous Deposits means any payment made by or on behalf of clients, received into a CSA of the Second Plaintiff on or after 18 May 2015, where the purpose for which the payment was made failed, but excluding the Erroneous Withdrawals.

THE COURT FURTHER NOTES THAT order 2 (b) is made without prejudice to the right of the first defendants to apply if so advised to vary the current costs regime, to the effect that the erroneous withdrawals be exonerated from liability for the liquidators' costs.

Proceedings are adjourned to 9 November 2016 for pre-trial directions.

This matter is listed for Pre-Trial Directions on 9 November 2016 9:45 AM before the Supreme Court - Civil at Supreme Court Sydney.

The following hearing dates are vacated:

16 Nov 2016 09:45 AM

Reason: By Consent

NOTE document entitled Short Minutes of Order (as amended) initialled by me, dated this day & placed with the papers.

THE COURT:

1. Orders that the First Plaintiffs would be justified, in the case of the Erroneous Withdrawals and Post-appointment Erroneous Deposits, in treating clients, in respect of payments of \$100 or less, as having no entitlement to receive a distribution in respect of that payment.

2. Orders that the First Plaintiffs:

(a) are justified in converting into Australian dollars (if necessary) and paying Post-appointment Erroneous Deposits from the CSAs into which they were received to a separate trust account

established by the liquidators for the purpose of distributing those amounts (the ED Distribution Account) after deduction of a proportionate amount of the costs, expenses and remuneration paid, approved to be paid or payable from the relevant CSA (at the time of payment into the ED Distribution Account) in accordance with the orders made in this proceeding;

(b) pay Erroneous Withdrawals from the CSA into which they were received to a separate trust account established by the liquidators for the purpose of distributing those amounts (the EW Distribution Account) after deduction of a proportionate amount of the costs, expenses and remuneration paid, approved to be paid or payable from them (at the time of payment into the EW Distribution Account) in accordance with the orders made in this proceeding.

3. Orders that the liquidators' remuneration, costs and expenses, and BBYL's costs and expenses, reasonably incurred in connection with:

(a) distributing the Post-appointment Erroneous Deposits, be paid out of the ED Distribution Account on an indemnity basis in accordance with order 4;

(b) distributing the Erroneous Withdrawals, be paid out of the EW Distribution Account on an indemnity basis in accordance with order 4.

4. For the purpose of order 3, the matter be referred to a Registrar for examination and approval of the liquidators' remuneration, costs and expenses and BBYL's costs and expenses, and the Registrar's decision be subject to review in the same manner as a Registrar's decision approving the remuneration of a liquidator.

5. Orders that the plaintiffs are justified in paying the liquidators' remuneration, costs and expenses, and BBYL's costs and expenses in connection with:

(a) distributing the Post-appointment Erroneous Deposits, as determined in accordance with order 4, from the ED Distribution Account;

(b) distributing the Erroneous Withdrawals, as determined in accordance with order 4, from the EW Distribution Account.

6. Orders that the First Plaintiffs:

(a) are justified in paying Post-appointment Erroneous Deposits from the ED Distribution Account to the clients from whom the Post-appointment Erroneous Deposits were received, after deduction of a proportionate amount of the costs, expenses and remuneration paid or approved to be paid from the ED Distribution Account in accordance with orders 3 and 4 above;

(b) pay Erroneous Withdrawals from the EW Distribution Account to the clients from whom the Erroneous Withdrawals were received, after deduction of a proportionate amount of the costs, expenses and remuneration paid or approved to be paid from the EW Distribution Account in accordance with orders 3 and 4 above.

7. Reserves any further question as to inter-partes costs of the separate question.

8. Grants liberty to apply on three days' notice.

Definitions:

In these orders:

CSA means any of the 47 client segregated accounts of the Second Plaintiff identified in paragraph 37 of the affidavit of Stephen Ernest Vaughan affirmed on 2 October 2015.

Erroneous Withdrawals means the amounts described as "invalid margin calls" in the reconciliation commencing on page 64 of Confidential Exhibit BL-2 to the affidavit of Brett Lord affirmed on 9 March 2016, totalling \$2,396,157.41.

Post-appointment Erroneous Deposits means any payment made by or on behalf of clients, received into a CSA of the Second Plaintiff on or after 18 May 2015, where the purpose for which the payment was made failed, but excluding the Erroneous Withdrawals.

THE COURT FURTHER NOTES THAT order 2 (b) is made without prejudice to the right of the first defendants to apply if so advised to vary the current costs regime, to the effect that the erroneous withdrawals be exonerated from liability for the liquidators' costs.

Proceedings are adjourned to 9 November 2016 for pre-trial directions.

## SEAL AND SIGNATURE



Signature Chris D'Aeth  
Capacity Principal Registrar  
Date 12 October 2016

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