



Issued: 8 December 2016 2:47 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 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 December 2016
Date entered	7 December 2016

TERMS OF JUDGMENT/ORDER

THE COURT NOTES THAT the receivers are content to rely on their written submissions AND ORDERS THAT the receivers be excused from attendances at the hearing in February 2017. BY CONSENT THE COURT MAKES ORDERS 1, 2 and 3 in the document entitled "Short Minute of Orders" initialled by me, dated this day and placed with the papers.

THE COURT ORDERS THAT:

1. The plaintiffs are justified in treating:

- the assets referred to as "Total Counterparty Cash, Stock and Options" in the "IB" column of the table at page 68, paragraph 12.1 of the Client monies investigations Liquidators' Supplementary Report dated 15 June 2016 ("CSA 2"), and
- the funds in account 553619321 with St George Bank styled "BBY Ltd IB Buffer", (collectively, "the IB Platform Assets") as beneficially owned by all clients of the Second Plaintiff with an account with the Second Plaintiff established in connection with financial products offered by Interactive Brokers LLC ("the IB Clients").

2. The plaintiffs are justified in:

- distributing the IB Platform Assets in their entirety to the IB Clients;
- not distributing the IB Platform Assets, or any part thereof, to clients or former clients of the Second Plaintiff other than the IB Clients;
- offering the IB Clients the opportunity to assert and prove a claim, including a tracing claim, in respect of the IB Platform Assets (or any part thereof);
- distributing any part of the IB Platform Assets in respect of which a tracing claim is proved to the IB Client who proved the claim upon payment by that IB Client to the first plaintiffs of their costs of:

- i. adjudicating the IB Client's claim; and
 - ii. distributing the assets the subject of the claim to the IB Client.
- (e) subject to (c) and (d) above, directing the sale of those IB Platform Assets other than open derivative positions (as defined in the orders made on 27 September 2016); and
- (f) making a rateable distribution of the IB Platform Assets (including the proceeds of the sales referred to at (e) above) to each IB Client who makes a claim against the IB Platform Assets (but who does not prove a tracing claim against the IB Platform Assets) equal to:

$A \times (B/C)$

where:

A = the total value of the IB Platform Assets (including the proceeds of the sales referred to at (e) above) at the date of distribution;

B = the balance, as at 15 May 2015, of the relevant IB Client's "sub-account" (as described at page 52, paragraph 9.4.1 of CSA 2); and

C = the aggregate of the balances of all IB Clients' sub-accounts as at 15 May 2015.

3. The fifth defendant is excused from appearing at the trial commencing 31 January 2017; except with respect to:

(a) any application for orders as to costs that may affect the fifth defendant; and

(b) any application with respect to prayer 4 of the Interlocutory Process filed 8 March 2016 that may affect the fifth defendant.

THE COURT BY CONSENT FURTHER ORDERS THAT the plaintiffs not make any distributions referred to in orders 2A, D and F before 4pm on 3 February 2017, or further order.

THE COURT ORDERS THAT the written submissions of the second defendant, third defendant and fourth defendant referred to and provided for in the directions made on 9 November 2016 include each of those defendants' notices of objection to the evidence served by the other parties on grounds of admissibility to the evidence served by the other parties.

THE COURT ORDERS THAT the directions made on 9 November 2016 be varied as follows:

In direction number 6, the time for service of the plaintiff's written submissions extended to 9 December 2016.

In direction 7, the time for lodgement and service of the submissions of the defendants, other than the fourth defendant, is extended to 23 December 2016, that already being the date for the fourth defendant's submissions.

THE COURT NOTES THAT the receivers are content to rely on their written submissions AND ORDERS THAT the receivers be excused from attendances at the hearing in February 2017.

BY CONSENT THE COURT MAKES ORDERS 1, 2 and 3 in the document entitled "Short Minute of Orders" initialled by me, dated this day and placed with the papers.

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1. The plaintiffs are justified in treating:

(a) the assets referred to as "Total Counterparty Cash, Stock and Options" in the "IB" column of the table at page 68, paragraph 12.1 of the Client monies investigations Liquidators' Supplementary Report dated 15 June 2016 ("CSA 2"), and

(b) the funds in account 553619321 with St George Bank styled "BBY Ltd IB Buffer", (collectively, "the IB Platform Assets") as beneficially owned by all clients of the Second Plaintiff with an account with the Second Plaintiff established in connection with financial products offered by Interactive Brokers LLC ("the IB Clients").

2. The plaintiffs are justified in:

(a) distributing the IB Platform Assets in their entirety to the IB Clients;

(b) not distributing the IB Platform Assets, or any part thereof, to clients or former clients of the Second Plaintiff other than the IB Clients;

(c) offering the IB Clients the opportunity to assert and prove a claim, including a tracing claim, in respect of the IB Platform Assets (or any part thereof);

(d) distributing any part of the IB Platform Assets in respect of which a tracing claim is proved to the IB Client who proved the claim upon payment by that IB Client to the first plaintiffs of their costs of:

i. adjudicating the IB Client's claim; and

ii. distributing the assets the subject of the claim to the IB Client.

(e) subject to (c) and (d) above, directing the sale of those IB Platform Assets other than open derivative positions (as defined in the orders made on 27 September 2016); and

(f) making a rateable distribution of the IB Platform Assets (including the proceeds of the sales referred to at (e) above) to each IB Client who makes a claim against the IB Platform Assets (but who does not prove a tracing claim against the IB Platform Assets) equal to:

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SEAL AND SIGNATURE



Signature Chris D'Aeth
Capacity Principal Registrar
Date 8 December 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