

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 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

and others

AFFIDAVIT OF STEPHEN ERNEST VAUGHAN

On 16 March 2016, I, Stephen Ernest Vaughan of 10 Shelley Street, Sydney in the State of New South Wales, Official and Registered Liquidator, affirm:

1. Ian Hall and I are the First Plaintiffs in this proceeding.
2. I have affirmed this affidavit in support of the Plaintiffs' Interlocutory Process dated 16 March 2016. By that Interlocutory Process, Mr Hall and I seek a declaration that payments received into BBYL's CSAs on or after 18 May 2015, the day after Ian Hall and I were appointed as administrators, by clients with no obligation to make the payment were amounts "*paid into the account in error*" within the meaning of regulation 7.8.03(6)(a) of the *Corporations Regulations 2001* (Cth) (the **Regulation**).
3. This affidavit should be read in conjunction with the affidavit I affirmed in this proceeding on 23 December 2015 (**December Affidavit**) which exhibited a report that Mr Hall and I had prepared on the client monies investigations undertaken by KPMG since our appointment on 17 May 2015



Signature of deponent



Signature of witness

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 RYZA 02 3003 4959
Attention: Ryan Zahrai

(the **CSA Report**). Capitalised terms in this affidavit have the same meaning as defined in the December Affidavit unless indicated otherwise.

4. Now shown to me and marked "**Exhibit SV-11**" and "**Confidential Exhibit SV-12**" are two folders containing documents behind numbered tabs to which I will refer in this affidavit. A reference to a **Tab** or **page number** is a reference to the document behind the corresponding tab or the corresponding page of Exhibit SV-11 or Confidential Exhibit SV-12. Confidential Exhibit SV-12 contains identifying information relating to clients of BBYL.
5. I make this affidavit from my own knowledge and from information, which I believe to be true, obtained during the course of the investigations conducted by Ian Hall, me and our staff into BBYL's affairs, including through review of the books and records by me and my staff. Where I have relied upon specific books or records I have specifically identified them in this affidavit. Where I have relied upon things that were said to me or my staff by former employees or persons concerned with the business of BBYL I have specifically indicated so.

Beatriz Martini

6. On 6 November 2015 my solicitors received the correspondence at **Tab 1 of SV-11** from Mills Oakley, solicitors for the Second Defendants. In that letter Mills Oakley advised my solicitors that:
 - (a) they act for Ms Beatriz Martini;
 - (b) Ms Martini requested on 16 May 2015 that her bank transfer \$200,000 from her account to BBYL in connection with an application she had previously made for an allotment of shares in Medlab Clinical Limited as part of its initial public offering;
 - (c) those funds were received by BBYL on 19 May 2015, two days after our appointment;
 - (d) no shares were purchased in Medlab by BBYL in accordance with Ms Martini's instructions;
 - (e) Ms Martini's position is that, in view of the decision of his Honour Justice Black in *Re MF Global Australia Ltd (in liq)* (2012) 267 FLR 27, it is uncontroversial that the amount of \$200,000 should be returned to Ms Martini as an amount paid in error within the meaning of regulation 7.8.03(6)(a) of the *Corporations Regulations* 2001 (Cth); and
 - (f) Ms Martini accordingly requests that the Liquidators make an application to the Court that Ms Martini's claim (and any similar claim) be determined separately from the other issues in this proceeding and as soon as possible.
7. Mills Oakley provided copies of certain documents, in support of Ms Martini's claim, to my solicitors. My staff have also conducted electronic searches of email data forming part of the books and records of BBYL for documents relevant to the circumstances in which Ms Martini paid monies to BBYL. From those documents, it appears that the sequence of events was as follows:



- (a) on 5 May 2015 Lincoln Liu, Corporate Finance Analyst at BBYL, sent an email to Ms Martini in which he gave an outline of a capital raising by Medlab Clinical Limited and provided hyperlinks to a number of related documents including the prospectus. A copy of that chain of emails obtained from the books and records of BBYL appears behind **Tab 2 of SV-11**;
- (b) on 6 May 2015, Ms Martini emailed the first page of a two page application form for shares in Medlab Clinical Limited to Mr Liu. A copy of that email and the attachment, obtained from the books and records of BBYL, appears behind **Tab 1 of SV-12**. At the bottom of the application form, the following acknowledgement appears:

I acknowledge that returning the application form with the application monies will constitute my/our offer to subscribe for Shares in Medlab Clinical Limited and that no notice of acceptance of the application will be provided;

A blank copy of the complete application form, obtained from the books and records of BBYL, appears behind **Tab 3 of SV-11**;

- (c) between 6 May 2015 and 8 May 2015, Ms Martini corresponded with Mr Liu and Sebastian Jurd of BBYL in relation to the manner of payment for Ms Martini's offer to acquire shares and in relation to the opening of a BBYL account for Ms Martini. Copies of that correspondence obtained from the books and records of BBYL appear behind **Tab 2 of SV-12**; and
- (d) on 21 May 2015 Sebastian Jurd of BBYL wrote to Ms Martini by email and said "*Below is a summary of your account which shows no current stock holdings and \$200k on ledger as your client funds*". A copy of that chain of emails including that email, provided to my solicitors by the solicitors for Ms Martini, appears behind **Tab 3 of SV-12**.
8. A copy of the replacement prospectus referred to in the application form, obtained from the books and records of BBYL, appears behind **Tab 4 of SV-11**.

Receipt of monies

9. A copy of an extract from the bank statement data for the '541 Account, the principal CSA used by BBYL for its Equities and ETOs clients, appears behind **Tab 4 of SV-12**. That bank statement data was retrieved electronically by members of my staff, in the course of investigations undertaken for the purpose of this proceeding, from the St George business banking online portal. The extract behind **Tab 4 of SV-12** shows receipt of \$200,000 into the '541 Account on 18 May 2015.
10. As I explain in paragraphs 241–251 of the December Affidavit, Brett Lord and Stephen Parbery of PPB Advisory have, in their capacity as receivers and managers of the secured property of BBYL, produced a document (the **Receivers' Reconciliation**) which reconciles payments and receipts

affecting the '541 Account on and from 18 May 2015 with books and records maintained by BBYL. A copy of that document appears behind **Tab 5 of SV-12**.

11. The Receivers have allocated the receipt of \$200,000 into the '541 Account on 18 May 2015 to client account 170972 and classified the receipt as "*Other client related transaction*". I understand this to be a residual category for client-related payments and receipts that do not fall into another category (inter alia because they are not debtor receipts, payments received or paid in respect of equities settlements or payments received or made in respect of ETO margin).
12. On about 29 February 2016, at the request of my staff, Agility Applications (a provider of third party reporting software that interfaces with the GBST Shares software used by BBYL to maintain its equities client ledgers) generated and provided statements of transactions for BBYL's Equities and ETOs client accounts. A true copy of the statement for client account number 170972 appears behind **Tab 6 of SV-12**. That statement shows:
 - (a) the account holder is Ms Martini;
 - (b) the only transaction in the period 17 May 2014 to 29 June 2015 was a direct deposit of \$200,000 made on 18 May 2015 (and journaled on 20 May 2015); and
 - (c) the credit balance on the account is \$200,000.

AFFIRMED at Sydney

Signature of deponent 

Name of witness JACK TYLER ORFORD

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~~ OR
I confirmed the deponent's identity using the following identification document:
NSW DRIVER'S LICENCE # 1553211

Signature of witness 