

**Form 2**

(rules 2.2 and 15A.3)

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

No                      of 2015

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

ACN 007 707 777

**STEPHEN ERNEST VAUGHAN AND IAN RICHARD HALL IN THEIR CAPACITY AS LIQUIDATORS OF  
BBY LIMITED (RECEIVERS AND MANAGERS APPOINTED)(IN LIQUIDATION) ACN 007 707 777**

First Plaintiff

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

Second Plaintiff

**ORIGINATING PROCESS**

**A.        DETAILS OF APPLICATION**

This application is made under sections 479 and 511 of the *Corporations Act* 2001 (Cth) and section 63 of the *Trustee Act* 1925 (NSW).

This application is for directions to be given to the First Plaintiffs (**Liquidators**) in their capacity as liquidators of BBY Limited (Receivers and Managers Appointed) (in Liquidation) ACN 007 707 777 (**BBY**).

On the facts stated in the supporting affidavit of Stephen Vaughan affirmed 13 August 2015, the plaintiffs apply for the following relief:

**Treatment of Client Segregated Accounts**

1.        A direction as to the manner in which funds in the Client Segregated Accounts should be distributed having regard to Regulation 7.8.03 of the Corporations Regulations (the **Regulation**).
2.        Further or alternatively, a direction or declaration as to whether the Liquidators should group or pool all (or some) of the Client Segregated Accounts and apply Regulation 7.8.03(6) to such groups or

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Filed on behalf of: The Plaintiffs

Prepared by:

**Ashurst Australia**

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Ref: EP DGE 02 3003 4959

Attention: David Greenberg

pool(s), or whether Regulation 7.8.03(6) should be applied separately to each such Client Segregated Account.

### Foreign Currencies

3. A direction as to whether funds in foreign currency in Client Segregated Accounts (subject to any particular exclusions, and if so, which) may be converted to Australian dollars for the purpose of being distributed.
4. Further or alternatively, a declaration that the Liquidators may convert any balances in Client Segregated Accounts held in foreign currency into Australian dollars (subject to any particular exclusions, and if so, which) prior to distribution to the persons found to be entitled thereto.

### Recoveries

5. A direction, or alternatively a declaration, as to whether some or all Recoveries are:
  - (a) beneficially owned by BBY; or
  - (b) held on trust for clients of BBY.
6. A direction, or alternatively a declaration as to whether some or all Recoveries should be deposited by the Liquidators into:
  - (a) the general account of BBY; or
  - (b) an existing Client Segregated Account or a new segregated account established by the Liquidators, and if so, which account.
7. A direction, or alternatively a declaration, as to the manner in which Recoveries should be distributed having regard to the Regulation, insofar as such recovered funds are found pursuant to paragraph 5 above to be held on trust for clients of BBY.

### Entitlements

8. A direction, or alternatively a declaration, as to the manner in which a client's entitlement to be paid out of the Client Segregated Accounts for the purposes of the Regulation should be calculated, and as at what date.
9. Further, a direction or alternatively a declaration as to whether the Liquidators are entitled to set off positive net account balances against negative net account balances in all accounts owned by the same BBY Group client.
10. Further, a direction that the Liquidators are justified in treating clients, in respect of each client account with a balance of \$25 (or some other amount) or less, as having no entitlement to participate in Client Segregated Accounts or Recoveries, in respect each such account.
11. Further, a direction, or alternatively a declaration as to whether the Liquidators should return some or all client deposits which were paid into the Client Segregated Accounts after 17 May 2015, on the basis that they were paid into such accounts in error within Regulation 7.8.03(6)(a), or otherwise.
12. A direction, or alternatively a declaration, as to whether interest earned on the Client Segregated Accounts or Recoveries are:
  - (a) beneficially owned by BBY; or
  - (b) held on trust for clients of BBY.

### Costs and expenses

13. An order or direction that the Liquidators' remuneration, costs and expenses, and BBY's costs and expenses, in connection with:
- (a) administering, property held by the BBY Group as trustee, including Client Segregated Accounts; and
  - (b) the costs of this application,
- be paid and/or recouped out of that trust property.
14. An order or direction that the Liquidators' remuneration, costs and expenses, and BBY's costs and expenses, in connection with recovering (or attempting to recover) property held, or to be held, by the BBY Group as trustee, be paid and/or recouped out of that trust property.
15. An order or direction as to the procedure to be adopted in connection with the payment and/or recoupment of the remuneration, costs and expenses, including the costs and expenses of this application, referred to in paragraph 13 and 14.

### Other

16. Liberty to the plaintiffs to apply to the court on 24 hours' notice.
17. Any further or other orders or declarations as this honourable Court deems fit.
18. An order or direction as to:
- (a) the persons to whom notice of these proceedings should be given; and
  - (b) the appointment of contradictors or representative defendants.

### Definitions

#### **Client Segregated Accounts**

means the bank accounts maintained by the BBY Group pursuant to Part 7.8 of the *Corporations Act 2001 (Cth)* being each of the 55 client segregated accounts of BBY identified in paragraph 33 of the affidavit of Stephen Ernest Vaughan sworn on 13 August 2015.

#### **Recoveries**

means any monies received, or to be received, by BBY from any person after the date of the appointment of administrators to BBY, including without limitation, pursuant to arrangements with clearing houses, hedge counterparties or other financial service providers.

Date: 13 August 2015



Emanuel Poulos  
Solicitor for the plaintiffs

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This application will be heard by  
Square, Sydney at                      am/pm on

at Law Courts Building, Queens

**C. FILING**

This originating process is filed by Ashurst Australia, solicitors for the plaintiffs.

**D. SERVICE**

The applicant's address for service is:                      c/- Ashurst Australia  
Lawyers  
Level 11, 5 Martin Place  
Sydney NSW 2000  
Ref: EP DGE 02 3003 4959

It is not intended to serve a copy of this originating process on any person.