

Form 3

(rules 2.2, 15A.4, 15A.8 and 15A.9)

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 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

22 SEP 2015



INTERLOCUTORY PROCESS

A. DETAILS OF APPLICATION

This application is made under sections 479 and 511 of the *Corporations Act 2001* (Cth), section 63 of the *Trustee Act 1925* (NSW) and rule 7.6 of the *Uniform Civil Procedure Rules 2005*.

The plaintiffs apply for the following relief:

Appointment of Representative Defendants

1. An order, pursuant to rule 7.6 of the *Uniform Civil Procedure Rules 2005*, that the following persons, or such other persons as the court determines, be added as defendants to the proceeding and be appointed to represent the following classes (or such other classes as are determined by the court):

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

- (a) Peter Brian Haywood and Bronwen Menai Haywood as trustees for the Haywood Superannuation Fund ABN 19 554 375 088 be appointed to represent all clients of BBY with an Equities Account; and
 - (b) Clive Riseam be appointed to represent all clients of BBY with a Futures Account, FX Account, Saxo Account or Other Products Account.
2. An order, pursuant to rule 7.6 of the *Uniform Civil Procedure Rules 2005*, that J Mazzetti Pty Ltd ACN 006 705 602 as Trustee for J Mazetti Pty Ltd Staff Superannuation Fund be appointed to represent all clients of BBY Limited (Receivers and Managers)(In Liquidation) (**BBY**) with an ETO Account, or such other persons as the court determines be added as a defendant to the proceeding, and be appointed to represent such clients.

Costs and expenses of Representative Defendants

3. An order that the legal expenses reasonably incurred by any representative defendant appointed in accordance with paragraphs 1 and 2 above, in so acting be paid:
- (a) out of the Client Segregated Accounts and Recoveries (to the extent they have been received) on a pro-rata basis having regard to the balance of the Client Segregated Accounts and the quantum of the Recoveries (to the extent they have been received) on the date of the payment; and
 - (b) on an indemnity basis subject to paragraph 4.
4. A direction that, for the purposes of paragraph 3(b) above, the matter be referred to a Registrar for examination and approval of the legal expenses of representative defendants.
5. A direction that the Plaintiffs are justified in paying the legal expenses incurred by any representative defendants appointed in accordance with paragraphs 1 and 2 above, as determined in accordance with paragraph 4, from the Client Segregated Accounts and Recoveries in accordance with paragraph 3(a).

Costs and expenses of Plaintiffs

6. An order that the Liquidators' remuneration, costs and expenses, and BBY's costs and expenses, in connection with administering the Client Segregated Accounts and Recoveries and this application, reasonably incurred, be paid:
- (a) out of the Client Segregated Accounts and Recoveries (to the extent they have been received) on a pro-rata basis having regard to the balance of the Client Segregated Accounts and the quantum of the Recoveries (to the extent they have been received) on the date of the payment; and
 - (b) on an indemnity basis as assessed in accordance with paragraph 8.
7. An order that the Liquidators' remuneration, costs and expenses, and BBY's costs and expenses, in connection with recovering (or attempting to recover) the Recoveries be paid:
- (a) out of the Client Segregated Accounts and Recoveries (to the extent they have been received) of the Product Line to which the relevant Recoveries, if obtained, relate, on a pro-rata basis having regard to the balance of the Client Segregated Accounts and the quantum of the Recoveries (to the extent they have been received) on the date of the payment; and
 - (b) on an indemnity basis as assessed in accordance with paragraph 8.
8. A direction that, for the purposes of paragraphs 6(b) and 7(b) above, that the matter be referred to a Registrar for examination and approval of the Liquidators' remuneration, costs and expenses, and BBY's costs and expenses.

9. A direction that the Plaintiffs are justified in paying the Liquidators' remuneration, costs and expenses, and BBY's costs and expenses, as determined in accordance with paragraph 8, from the Client Segregated Accounts and Recoveries in accordance with paragraphs 6(a) and 7(a), respectively.

Definitions

Client Segregated Accounts	means the bank accounts maintained by the BBY Group pursuant to Part 7.8 of the <i>Corporations Act</i> 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.
Equities Account	means an account with BBY established in connection with exchange traded equities such as shares and listed units.
ETO Account	means an account with BBY established in connection with exchange traded options.
Futures Account	means an account with BBY established in connection with exchange traded futures contracts and futures options.
FX Account	means an account with BBY established in connection with over-the-counter products comprising foreign exchange contracts.
Liquidators	means the First Plaintiffs.
Other Products Account	means an account with BBY established in connection with miscellaneous financial products, including carbon trading.
Product Line	Means each of the classes of financial products provided by BBY to its clients referable to an ETO Account, Equities Account, Futures Account, Saxo Account or Other Products Account.
Recoveries	means any monies received, or to be received, by BBY from any person after the date of the appointment of administrators to BBY which relate to client positions or clients generally, including without limitation, pursuant to arrangements with clearing houses, hedge counterparties or other financial service providers.
Saxo Account	means an account with BBY established in connection with financial products offered by Saxo Capital Markets.

Date: 22 September 2015


.....
Emanuel Poulos
Solicitor for the plaintiffs

This application will be heard by the Honourable Justice Brereton at Law Courts Building, Queens Square, Sydney at 9.45 am on 19 October 2015.

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 RYZA 02 3003 4959

It is intended to serve a copy of this interlocutory process on the defendants.