

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

AND

OTHERS

**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 AND
OTHERS**

First Plaintiff

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

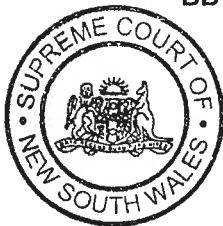
Second Plaintiff

**J MAZZETTI PTY LTD ACN 006 705 602 AS TRUSTEE FOR
J MAZZETTI PTY LTD STAFF SUPERANNUATION FUND (AND OTHERS)**

First Defendants

FILED

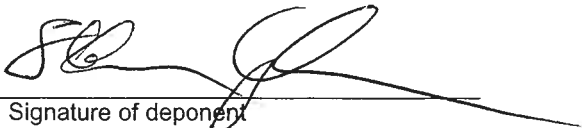
2 OCT 2015

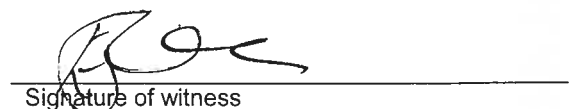


AFFIDAVIT

On 2 October 2015, I, Stephen Ernest Vaughan of 10 Shelley Street, Sydney in the State of New South Wales, Official and Registered Liquidator, affirm:

1. I am one of the joint and several liquidators of the Second Plaintiff (**BBYL**), together with my fellow liquidator Ian Hall, and am authorised to make this affidavit on behalf of Mr Hall and BBYL.
2. I am a Director of the accounting firm KPMG and work out of the Sydney office of KPMG.
3. I have affirmed this affidavit in support of the First Plaintiffs' Interlocutory Process dated 22 September 2015 (**Interlocutory Process**).


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
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Ref: EP RYZA 02 3003 4959
Attention: Ryan Zahrai

4. I to refer to my affidavit affirmed on 13 August 2015 and filed in this proceeding (**First Affidavit**).
5. The information outlined below is based upon the investigations which have been undertaken by and on behalf of Mr Hall and me as the voluntary administrators, and now liquidators of some of the companies in the BBY Group as described in paragraph 11 of my First Affidavit.
6. I make this affidavit based on my own knowledge, information and belief or from information that I have obtained through acting as one the voluntary administrators and now liquidators of companies in the BBY Group.
7. Shown to be at the time of affirming this affidavit is a folder of documents marked exhibit SV-2 (**Exhibit SV-2**). References by me to page numbers throughout this affidavit are to page numbers of Exhibit SV-2 unless indicated otherwise.

Purpose of commencing proceedings

8. On 13 August 2015, the Plaintiff's commenced, by way of Originating Process, the current proceedings in the Supreme Court of New South Wales seeking a number of directions and declarations in relation to the distribution of client funds (**Proceedings**).
9. As referred to in paragraphs 45 to 47 (inclusive) of my First Affidavit, as an Australian Financial Services Licensee, obligations are imposed upon BBYL (and in turn upon the Liquidators) under Part 7.8 of the *Corporations Act 2001* (**Act**) and regulation 7.8.03 of the *Corporations Regulations 2001* (Cth) (**Regulations**) as to how any monies deposited into client segregated accounts (**CSAs**) can be dealt with as part of the liquidation. If the money in each CSA is not sufficient to pay each person who is entitled to be paid money from that account, the money in the account must be paid in proportion to the amount of each person's entitlement, pursuant to Regulation 7.8.03(6)(d) of the Regulations (Cth). The directions and declarations sought in these Proceedings are in respect of each client's entitlement to the funds held in the CSAs and any related recoveries.
10. Further, as noted in paragraphs 48 to 54 (inclusive) of my First Affidavit, I received numerous queries and demands from BBYL clients seeking the return of monies they allege they are entitled to and putting me on notice that they intended to commence proceedings.
11. The Proceedings were, accordingly, commenced to obtain the relevant directions and declarations referred to above and to establish a central forum in which issues relating to the distribution and calculation of entitlements of monies held in the CSAs could be resolved.



Proposed appointment of representative defendants

12. In support of the plaintiff's interlocutory process dated 22 September 2015, and in order to facilitate the efficient and final determination of the issues in the Proceedings, the Liquidators seek, amongst other things, the appointment of representative defendants to represent:
- (a) all clients of BBYL (**ETO clients**) with an account with BBY established in connection with exchange traded options (**ETO Account**) ;
 - (b) all clients of BBYL (**Equities clients**) with an account with BBY established in connection with exchange traded equities such as shares and listed units (**Equities Account**) ; and
 - (c) all clients of BBYL (**Shortfall clients**) with an account with BBY established in connection with exchange traded futures contracts and futures options (**Futures Account**), account with BBY established in connection with over-the-counter products comprising foreign exchange contracts (**FX Account**), an account with BBY established in connection with financial products offered by Saxo Capital Markets (**Saxo Account**) or an account with BBY established in connection with miscellaneous financial products, including carbon trading (**Other Products Account**).
13. The Liquidators and my solicitors have continued discussions with BBYL clients that may be suitable and willing to be appointed as representatives. The Liquidators propose that the following parties be appointed as representatives as follows:
- (a) J Mazzetti Pty Ltd ACN 006 705 602 as Trustee for J Mazzetti Pty Ltd Staff Superannuation Fund (**Mazzetti**), already a defendant in these Proceedings, be appointed to represent ETO clients;
 - (b) Peter Brian Haywood and Bronwen Menai Haywood in Trust for the Haywood Superannuation Fund ABN 19 554 375 088 (**the Haywoods**) be added as a defendant to the Proceedings and be appointed to represent Equities Clients; and
 - (c) Clive Riseam be added as a defendant to the Proceedings and be appointed to represent Shortfall clients.

Mazzetti

14. On 13 August 2015, the Liquidators commenced these Proceedings.
15. On 17 August 2015, Mazzetti and others, represented by counsel, appeared at the directions hearing before Justice Brereton in the Proceedings seeking to be joined as defendants for the Equities clients and ETO clients.



16. On 24 August 2015, by order of the court, Mazzetti and others were joined as defendants to the Proceedings.
17. Mazzetti is a client of BBYL with an ETO Account claiming an entitlement, currently particularised at \$2,001,962.70. The Liquidators' investigations to date indicate that Mazzetti has the largest claimed entitlement of all BBYL clients who have an ETO Account. Exhibited at pages 1 to 3 is a copy of emails between my solicitors and Partners Legal, whereby Partners Legal set out the quantum of Mazzetti's previous claimed entitlement.
18. At the time of affirming my First Affidavit, the Liquidators' investigations indicated that CSAs referable to both Equities Accounts and ETO Accounts were in surplus. As such, the Liquidators originally proposed that two representative defendants be appointed, one acting for both Equities clients and ETO clients, and one acting for all other clients who faced a shortfall in respect of their claimed entitlements, being the Shortfall clients.
19. At or around 9 September 2015, Partners Legal informed my solicitors by telephone that Mazzetti was willing and able to act as representative defendant for the Equities clients and ETO clients.
20. On 10 September 2015, Partners Legal informed my solicitors by email that, due to a potential conflict of interest that they believed may exist, Mazzetti was no longer willing to accept an appointment as representative defendant for both Equities clients and ETO clients. Exhibited at page 4 is a copy of that email.
21. On 15 and 16 September 2015, my solicitors wrote to Partners Legal seeking an explanation of the grounds of the potential conflict of interest between Equities clients and ETO clients in the Proceedings. Exhibited at pages 5 to 6 is a copy of those emails.
22. On 16 September 2015, Partners Legal wrote to my solicitors providing the grounds for the potential conflict of interest between Equities clients and ETO clients. Exhibited at page 7 is a copy of that email.
23. In light of the position taken by Mazzetti, the Liquidators have proposed a separate representative defendant to represent Equities clients, as described in paragraph 13 and 24 to 26 of this affidavit.

The Haywoods

24. Having regard to the alleged conflict of interest referred to in paragraph 22 of this affidavit, the Liquidators propose a separate representative defendant to represent Equities clients.
25. The Liquidators identified the Haywoods as clients of BBYL who held Equities Accounts and could act as representative defendants for that category of clients. The Haywoods have an Equities Account claiming an entitlement of \$144,594.02. The Liquidators' investigations indicate that the



Haywoods have the second largest claimed entitlement of all BBYL clients who have an Equities Account.

26. On 17 September 2015, Mills Oakley Lawyers (**Mills Oakley**), the solicitors retained by the Haywoods, confirmed that the Haywoods were willing to act as representative defendants for Equity clients. Exhibited at page 8 is a copy of that email.

Clive Riseam

27. Clive Riseam (**Mr Riseam**) is a client of BBYL with a Futures Account claiming an entitlement of \$706,320.79. The Liquidators' investigations indicate Mr Riseam has the highest claimed entitlement of all BBYL clients with a Futures Account.
28. Corrs Chambers Westgarth (**Corrs**), the solicitors acting for a number of BBYL clients who hold Futures Accounts, have appeared by counsel at several of the directions hearings and have maintained an interest in the Proceedings.
29. On 2 September 2015, my solicitors wrote to Corrs enquiring as to whether one of their clients would be willing to act as representative defendant for all clients of BBYL who hold Futures Accounts (**Futures clients**) in the Proceedings. Exhibited at page 9 is a copy of that letter.
30. On 7 September 2015, the Liquidators received a letter from Corrs confirming that Mr Riseam would be willing to be appointed as representative defendant in the Proceedings for the Futures clients. Exhibited at page 10 is a copy of that letter.
31. Subsequently, on 16 September 2015, my solicitors requested Corrs to seek instructions as to whether Mr Riseam would consent to a proposal to act as representative defendant for the Shortfall clients.
32. On 17 September 2015, my solicitors were informed by Corrs via a telephone conversation that Mr Riseam agreed to be proposed as representative defendant for the Shortfall clients. Exhibited at pages 11 to 13 is a copy of emails between my solicitors and Corrs confirming Mr Riseam's consent to that proposal.

Securities Exchanges Guarantee Corporation Limited (SEGC) and the National Guarantee Fund (NGF)

33. On 1 October 2015, my solicitors received a letter from Clayton Utz, the solicitors acting for the SEGC. Exhibited at pages 14 to 17 is a copy of that letter.
34. The Liquidators consider that it may be appropriate for SEGC to perform a representative defendant role, in particular if it is willing to bear its own costs in that connection.



Financial position of BBYL

35. On Monday 18 May 2015, Stephen Parberry and Brett Lord of PPB Advisory were appointed by St George Bank (St George) to be receivers and managers over the secured property of, among other entities, BBYL (Receivers) pursuant to a fixed and floating charge dated 2 December 2011 (Charge) granted by BBYL to St George. The Liquidators hold proceeds derived from realisations during the voluntary administration of BBYL that are not subject to the Charge. These funds are committed to meet general fees and expenses of the administration, including administrators' remuneration approved at meetings of creditors of BBYL. The Liquidators have determined that BBYL does not presently hold any funds other than those that are held in CSAs and the amounts referred to in paragraph 37 below which are not already committed or subject to the Charge in favour of St George.
36. The Liquidators' investigations have determined that BBYL holds the following amounts which are not, at the present time, considered by the Liquidators to be subject to the Charge granted by BBYL to St George:
- a. \$455,863.49, being monies received from Halifax Investment Services Ltd (**Halifax monies**), a counterparty trading in foreign exchange products. These funds are being held in a segregated bank account operated by the Receivers. Exhibited at page 18 is a copy of a letter relating to the Halifax monies received from the Receivers; and
 - b. \$3,400,115 held by the Liquidators representing funds from the Australian Stock Exchange (**ASX**) as returned collateral following the close-out of client positions in connection with exchange traded options..
37. The table below shows the CSAs together with the balance in each account as at 25 September 2015. Paragraph 33 of my First Affidavit provided account details for 55 CSAs. The Liquidators' investigations have since determined that the eight CSAs operated by the Bank of New Zealand (**BNZ**) are not operated by BBYL. The amounts in these accounts total \$424,105. There are 47 CSAs operated by BBYL, totalling \$14,323,224 as at 25 September 2015, per the below table.

#	Bank	Account Number	Account Name	Balance AUD
1.	St George	55345252541	BBY Ltd Client Trust Account	\$ 10,718,939
2.	St George	553469415	BBY Ltd Equities Trust 2	\$ 0



#	Bank	Account Number	Account Name	Balance AUD
3.	St George	553486012	BBY Ltd ETO Trust Account	\$ 0
4.	NAB	12-407-8694	BBY Equities Trust Account	\$ 1,026,579
5.	St George	204226USD02	BBY Limited – Future SEG USD	\$ 719,921
6.	St George	204226EUR02	BBY Limited – Future SEF EUR	\$ 55,498
7.	St George	204226SGD02	BBY Limited – Future SEG SGD	\$ 0
8.	St George	553619305	BBY Ltd Futures House	\$ 66
9.	St George	204226HKD02	BBY Limited – Future SEG HKD	\$ 10,117
10.	St George	204226NZD02	BBY Limited - Future – SEG NZD	\$ 20,447
11.	St George	204226CHF02	BBY Limited - Future SEG CHF	\$ 9,816
12.	St George	204226CAD02	BBY Limited - Future SEG CAN	\$ 62,691
13.	St George	204226JPY02	BBY Limited - Future SEG JPY	\$ 100,091
14.	St George	204226GBP02	BBY Limited - Future SEG GBP	\$ 190,697
15.	St George	553619284	BBY Ltd Futures Client Seg	\$ 117,440
16.	St George	553619268	BBY Ltd FX Trust	\$ 130,425
17.	St George	204226USD01	BBY Limited – FX Trust USD	\$ 146,446
18.	St George	204226GBP01	BBY Limited – FX Trust GBP	\$ 122,281
19.	St George	204226CHF01	BBY Limited – FX Trust CHF	\$ 19,028
20.	St George	204226CAD01	BBY Limited – FX Trust CAD	\$ 34,996
21.	St George	204226PHP01	BBY Limited – FX Trust PHP	\$ 204

#	Bank	Account Number	Account Name	Balance AUD
22.	St George	204226THB01	BBY Limited – FX Trust THB	\$ 2,258
23.	St George	204226ZAR01	BBY Limited – FX Trust Ac ZAR	\$ 8,383
24.	St George	204226HKD01	BBY Limited - FX Trust HKD	\$ 34,462
25.	St George	204226FJD01	BBY Limited - FX Trust FJD	\$ 17,884
26.	St George	204226JPY01	BBY Limited - FX Trust JPY	\$ 99,474
27.	St George	204226SGD01	BBY Limited - FX Trust SGD	\$ 11,604
28.	St George	204226EUR01	BBY Limited - Trust EUR	\$ 105,808
29.	St George	204226NZD01	BBY Limited - FX Trust NZD	\$ 260,642
30.	St George	204226EUR03	BBY Limited – SAXO Buffer	\$ 0
31.	St George	204226HKD03	BBY Limited – SAXO Buffer	\$ 0
32.	St George	204226GBP03	BBY Limited – SAXO Buffer	\$ 0
33.	St George	204226USD03	BBY Limited – SAXO Buffer	\$ 4,475
34.	St George	204226NZD03	BBY Limited – SAXO Buffer	\$ 35,195
35.	St George	553619356	BBY Ltd – SAXO Buffer	\$ 56,436
36.	St George	553486047	BBY Ltd Carbon Trading Corp A/c	(\$ 41)
37.	St George	553619137	BBY Limited – WLP Omnibus	\$64,508
38.	St George	553980002	General trust account	\$ 184
39.	St George	553619153	BBY Ltd Trust Ac1	\$ 37
40.	St George	553619217	BBY Ltd Trust Ac3	\$ 1

#	Bank	Account Number	Account Name	Balance AUD
41.	St George	553619321	BBY Ltd IB Buffer	\$ 1,172
42.	St George	204226USD04	BBY Limited USD Ac	\$ 0
43.	NAB	16-913-3546	BBY Limited Trust Ac1	\$ 2,604
44.	NAB	16-665-5330	BBY Limited Trust Ac2	\$ 15,137
45.	NAB	16-665-5349	BBY Limited Trust Ac3	\$ 117,319
46.	NAB	16-665-5357	BBY Limited Trust Ac4	\$ 0
47.	NAB	19-805-7204	Corporate Cheque Ac Trust Ac5	\$ 0
TOTAL				\$14,323,224

38. The Liquidators' investigations have determined that the total claimed entitlements (in Australian dollars), as at 17 May 2015, are as follows:

Accounts	Total claimed entitlements (\$)
ETO	416,678
Equities	7,804,569
Futures	13,296,580
FX	2,343,197
Saxo	5,987,000
Other Products	1,937,400
TOTAL	31,785,423




Costs and remuneration

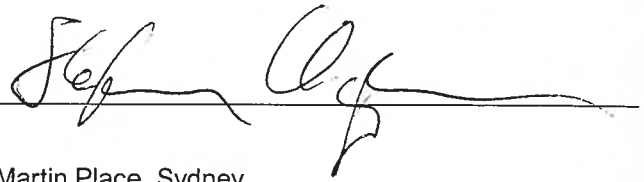
39. The Liquidators seek an order that the legal expenses reasonably incurred by any representative defendant appointed in accordance with paragraph 13 above in connection with the Proceedings, in so acting be paid out of the CSAs and Recoveries (to the extent they have been received) on a pro-rata basis having regard to the balance of the CSAs and the quantum of Recoveries (to the extent they have been received) on the date of the payment, on an indemnity basis subject to paragraph 42 below.
40. Similarly, the Liquidators seek an order or direction that the Liquidators' remuneration, costs and expenses, reasonably incurred, and BBYL's costs and expenses, in connection with the administration of the CSAs, and this application, reasonably incurred, be paid out of the CSAs and Recoveries (to the extent they have been received) on a pro-rata basis having regard to the balance of the CSAs and the quantum of the Recoveries (to the extent they have been received) on the date of the payment, on an indemnity basis in accordance with paragraph 42 below.
41. The Liquidators have regularly kept the committee of inspection of BBYL (**COI**) informed as to the progress of their investigations and these proceedings. The COI is composed of 9 members, four of whom who are Futures Clients, one member who is an ETO Client, and one member who holds an Other Products account. The remaining 3 non-client members are general creditors.
42. The Liquidators propose that the reasonable costs, expenses (and in the case of the Liquidators, their remuneration) incurred by the parties described in the Interlocutory Process be referred to a Registrar for examination and approval on a monthly basis.
43. The procedure proposed in paragraph 42 above will ensure that:
- (a) there is a regular review of costs and expenses incurred in the Proceedings which is communicated to the parties and there are no extended periods of time in which representative defendants are left without reimbursement for costs and expenses incurred; and
 - (b) steps taken by parties in the Proceedings can be reviewed and adjusted to be more efficient if required.
44. In the case of the Liquidators' remuneration, the amount that is presented to the Registrar for examination and approval will be an amount that has already been reviewed and approved by the COI, in accordance with section 499 of the Act.



AFFIRMED at

Sydney

Signature of deponent

A handwritten signature in black ink, appearing to read 'John O'Connell', written over a horizontal line.

Name of witness

Address of witness

Level 11, 5 Martin Place, Sydney

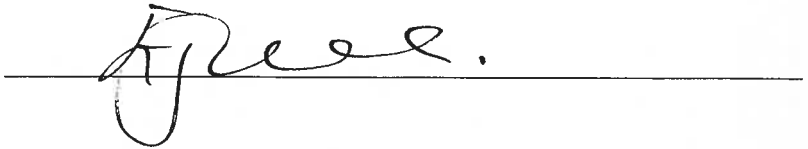
Capacity of witness

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.

Signature of witness

A handwritten signature in black ink, appearing to read 'John O'Connell', written over a horizontal line.