

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

No. 2015/00237028

IN THE MATTER OF BBY LIMITED (RECEIVERS AND 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 LIMITED STAFF SUPERANNUATION FUND (and Others)
First Defendants

AFFIDAVIT

On 1 October 2015, I, **PETER SALVATORE GANDOLFO** of Level 13, 636 St Kilda Road, Melbourne 3004, Managing Partner of Partners Legal, Australian legal practitioner, **MAKE OATH AND SAY** as follows:

1. I act on behalf of the First Defendants and have the care and conduct of this matter.
2. I make this affidavit in support of paragraphs 1 to 5 (inclusive) of the First Defendants' Interlocutory Process dated 17 September 2015. I do so by reference to each of the directions proposed in those paragraphs, in turn.

Filed on behalf of: the First Defendants

Prepared by:

Partners Legal

of Level 13, 636 St Kilda Road

MELBOURNE VIC 3004

by their agents, Bamford Lawyers

Level 11, 14 Martin Place

SYDNEY NSW 2000

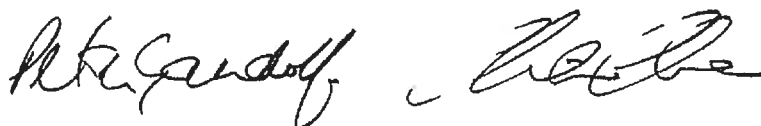
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Ref: JGB150061

Attention Mr. Bamford



PROPOSED DIRECTION NO. 1

3. By the first proposed direction, the First Defendants seek that the group of former clients of the Second Plaintiff ("BBY") described by the First Plaintiff ("the Liquidators") as the "ETO/Equities" product group be divided into two separate product groups, namely:
- (a) "Option Clients" (being clients of BBY who, as at the date of liquidation, held open option positions in respect of exchange traded options negotiated through BBY, in respect of which they had provided collateral in accordance with the Listing Rules and other requirements of the exchange operator, ASX Clear); and
 - (b) "Equities Clients" (being clients of BBY who, as at the date of liquidation, had uncompleted transactions for the purchase or sale of shares negotiated on their behalf by BBY, and/or who had funds held by BBY (whether in a CSA or otherwise) as a consequence of settling the sale of, and/or in readiness for effecting the settlement of the purchase of, such shares).
4. The first proposed direction is sought because the First Defendants apprehend that, by reason of the matters deposed to in paragraph 5 below, the positions of Option Clients and of Equities Clients are not fully aligned on at least the following issues, namely:
- (a) the Liquidators' foreshadowed proposal for "pooling" of BBY's Client Segregated Accounts ("CSAs"); and
 - (b) the substantive matters raised by paragraphs 6 and following of the First Defendants' Interlocutory Process dated 17 September 2015, being in substance the return to Option Clients of:
 - (i) collateral (in the form of cash and share scrip) lodged by those clients and in most cases held externally to BBY, by ASX Clear; and

Peter Sandolly 

- (ii) funds drawn by BBY, post the appointment of the Liquidators, from bank accounts of Option Clients purportedly to meet margin calls on open option positions of those clients.

5. I am instructed by the First Defendants as to the following matters, each of which I believe to be true:

- (a) before engaging in certain option transactions (and in particular, before initially selling ("writing") a put or call option, Option Clients were required to and did lodge cash or share scrip as collateral (to protect the market against the risk of default by an Options Client in meeting its obligations to the option holder in the event of exercise of the option), in accordance with ASX Clear's "Initial Margin" requirements contained in ASX Operating Rule 14.7.5. By contrast, there was no requirement for Equity Clients to lodge collateral for share trading, and they did not do so;
- (b) for as long as an Option Client continued to hold an open position as the writer of a put or call option, the amount of collateral required to support that position was recalculated daily by ASX Clear depending on, amongst other factors, movements in the price of the underlying security. As a consequence of these daily changes in collateral requirements, funds moved (through BBY) between the Option Clients and ASX Clear, often on a daily basis, in order to provide more, alternatively less, collateral. On the other hand, Equity Clients had paid the full price of their shares upon purchase, so there was no risk to the integrity of the market from price fluctuations, and no collateral was required. Accordingly, Equity Clients did not have funds moving to and from ASX Clear through BBY due to fluctuating collateral requirements;
- (c) Option Clients did not hold their funds in the BBY's trust account, but rather in their own personal Cash Management Accounts ("CMAs") in external bank accounts, whereas Equity Clients hold their excess funds in BBY's trust account;
- (d) cash or other collateral provided by Option Clients to support their option trading was ultimately held by ASX Clear, not by BBY. Furthermore,



collateral provided by Option Clients was never subsidised by cash from any other trust funds held by BBY, because the collateral was (and was required to be) fully funded by the Option Clients. This requirement was imposed by ASX Clear, in that any clients who were not fully funded were closed out in accordance with ASX Clear Rule 7.2.1 (Default by a Client).

6. As to the matters deposed to in sub-paragraphs (a) to (d) of paragraph 5 above, I am further informed by Mr Christopher Forte ("Mr Forte"), a broker who was engaged by BBY until the time of its liquidation and who continues to work in the former business of BBY following the post-liquidation sale of that business to APP Securities Pty Ltd ("APP"), that each of those matters is true. Mr Forte was the broker who dealt with most of the First Defendants on behalf of BBY, and he now continues to deal with most of the First Defendants as their broker on behalf of APP.

PROPOSED DIRECTION NO 2:

7. By the second proposed direction, the First Defendants seek that the firstnamed First Defendant, J Mazzetti Pty Ltd ACN 006 705 602, as Trustee for J Mazzetti Pty Ltd Staff Superannuation Fund ("Mazzetti"), be appointed as a representative defendant to represent the interests of all Options Clients. I note that Mazzetti is also proposed for that appointment by the Liquidators, in their Notice to Clients issued in accordance with the Court's orders made on 18 September 2015.
8. I am instructed by Mazzetti and believe that Mazzetti is entitled to the return of approximately \$2 million in cash and scrip held as collateral for its options positions negotiated through BBY and open as at the time of liquidation. That entitlement of Mazzetti has been calculated as follows:

Peter Gambell
[Signature]

**Claimed Interest of J Mazzetti Pty Ltd ACN 006 705 602, as Trustee for
J Mazzetti Pty Ltd Staff Superannuation Fund**

Cash	Cash lodged with ASX Clear (to cover risk of adverse price movement)	\$657,108.09
Less	Surplus of cash returned on 18 May 2015 to J Mazzetti Pty Ltd	\$198,273.79
Sub-total of Cash to meet Margin Call		\$458,834.30
Plus	Market Value of Stocks held as Collateral as at 15 May 2015	\$351,731.00
Plus	Market Value of Options held as at 15 May 2015	\$673,267.00
Plus	19 May 2015 Margin Call on J Mazzetti Pty Ltd (representing cash withdrawn from Macquarie CMA of J Mazzetti Pty Ltd)	\$518,130.40
Total Entitlement		\$2,001,962.70

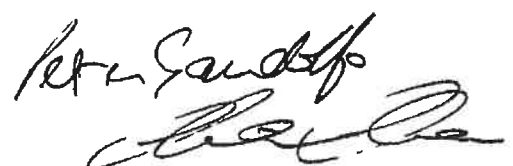
9. I note that the claimed entitlement of Mazzetti calculated in paragraph 8 above differs from the claimed entitlement of approximately \$1.8 million referred to in the Liquidators' recent Notice to Creditors. That is because Mazzetti has revised and corrected its calculations since first communicating its claim to the Liquidators. Should it become necessary, Mazzetti will provide detailed calculations explaining how it has revised and corrected its calculated claim. However the precise quantum of Mazzetti's claim does not appear to me to be material for present purposes.
10. I am further informed by Mr Julian Mazzetti, the sole director of Mazzetti, and believe that Mazzetti consents to being appointed as a representative of Options Clients of BBY for the purposes of this proceeding, and that as an Option Client with a substantial interest in the liquidation of BBY, Mazzetti (through Mr Mazzetti) will take an active interest in this proceeding and will provide instructions to my firm and counsel retained by my firm in a timely way to ensure that the interests of Option Clients are fully and fairly advanced.

John Sandell
[Signature]

11. I am also informed by Mr Forte and believe that he has communicated with the First Defendants who have all supported the appointment of Mazzetti as a representative of all Option Clients for the purposes of this proceeding.

PROPOSED DIRECTION NO 3

12. By the third proposed direction the First Defendants seek that the Liquidator make file and serve an affidavit disclosing to the best of the Liquidators' knowledge details of:
- (a) any demands for payment by Options Clients of any liability owed to BBY outstanding as at 15 May 2015, such as a notice to pay an outstanding debt arising from any trading, margining, budgeting, clearing or settlement conducted by BBY; and
 - (b) any and all attempts to locate or create client ledgers for Option Clients, including but not limited to attempts to obtain relevant information from the ASX Clear System and/or from the audit packs of BBY.
13. I am informed by Mr Forte and believe that these documents will facilitate a determination of the amount of such sums owing to the First Defendants (and other Options Clients) which can be identified from information available on the Client Ledgers, such as trading, clearing margining and settlement information which in turn will show every transaction including trading, clearing, margining and settlement transactions which has occurred for the Options Clients since the commencement of options trading with ASX Clear.
14. I am further informed by Mr Forte and believe that in accordance with ASX Clear Rule 1.1.1, Client Ledgers were at all relevant times maintained by ASX Clear pursuant to the services provided by ASX Clear to BBY. Information such as trading, clearing, margining and settlement information which can be extracted from the ledgers is contained in the trading position, collateral holding statements and



financial statements which are issued on a daily basis, or current account statements (pursuant to ASX Clear Rule 4.15) which are issued on a monthly basis.

15. Mr Forte informs me and I believe that the Client Ledgers are the primary source of all information about Option Client entitlements which will reveal at what price their open positions were disposed of by ASX Clear, and how much of their cash and/or other collateral was used to undertake the close out of their positions. Furthermore the Option Clients will be informed of the balance of their cash and/or other collateral remaining after close out of their positions.

PROPOSED DIRECTION NO 4

16. By the fourth proposed direction the First Defendants seek that the Liquidators obtain from ASX Clear and make available to Partners Legal a schedule of collateral held for Option Clients as at 15 May 2015, and the market value of open option positions of Options Clients as at that date for the purpose of enabling the First Defendants to calculate their client entitlements based on independently sourced information that is likely to be accepted as definitive by all parties. I am informed by Mr Forte and believe that to date the First Defendants have only been able to access (through him) the hard copy and electronic records held by AAP Securities Pty Ltd that were purchased from BBY. However, access to the primary records held by ASX Clear, which are readily accessible by the Liquidator on behalf of BBY but which are not accessible to APP, will contain the required information and will have the benefit of being sourced independently of BBY's records. Given the events surrounding BBY's collapse, the First Defendants' (and, I expect, the Liquidators') preference is to obtain and rely upon information from reliable sources external to BBY, where available.

PROPOSED DIRECTION NO 5

17. By the fifth proposed direction the First Defendants seek that the Liquidators provide particulars to Partners Legal of the Option Client accounts totalling approximately \$2.4m, or such other sum withdrawn by the Liquidators on or about



19 May 2015 from bank accounts and cash management accounts of Option Clients held at financial institutions external to BBY using BBY's third party authorities. Such documents will include any cash transaction statements.

18. I am informed by Mr Forte and believe that from an examination of BBY records available from AAP, BBY whilst under the control of the Liquidators on and shortly after 19 July 2015 had accessed the Option Clients' bank accounts and attempted to withdraw amounts totalling \$3,186,996.85, but was successful in withdrawing only approximately \$2.4 million, as has been reported by the Liquidators. I am informed by Mr Forte and believe that the information sought by the proposed fifth direction appears in documents known as Worksheet Batch Posting Lists which were created and retained by BBY's accounting system on a daily basis at all times, including post-liquidation. The information is sought to enable parties to assess and agree upon (or if need be, to prove) the precise amounts withdrawn by the Liquidators.

Signature of deponent



Name of witness

Address of witness

Capacity of witness

CHRISTIAN LANGTRY CHENU
636 St. Kilda Road, Melbourne 3004
An Australian Legal Practitioner
within the meaning of the Legal
Profession Uniform Law (Victoria).

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 confirmed the deponent's identity using the following identification document: Current Victorian Driver Licence No. 022100371.

Signature of witness

