

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 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

**PETER BRIAN HAYWOOD AND BRONWEN MENAI HAYWOOD AS TRUSTEES FOR THE HAYWOOD
SUPERANNUATION FUND ABN 19 554 375 088**

Second Defendant

CLIVE RISEAM

Third Defendant

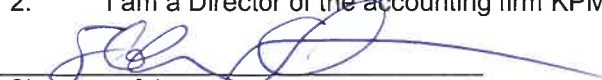
**SECURITIES EXCHANGES GUARANTEE CORPORATION LIMITED
ACN 008 626 793**

Fourth Defendant

AFFIDAVIT OF STEPHEN ERNEST VAUGHAN

On 18 February 2016, 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.


Signature of deponent


Signature of witness

Filed on behalf of the plaintiffs
Prepared by:
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Attention: Jack Orford

3. I affirm this affidavit in support of the plaintiffs' interlocutory process dated 18 February 2016 (**Interlocutory Process**).
4. All of the facts and circumstances to which I depose are within my own knowledge, save for such matters as are deposed to from information. My means of knowledge and sources of information are stated in this affidavit.
5. Now produced and shown to me and marked "**Exhibit SV-8**" is a paginated folder which contains documents to which I refer in this affidavit. References to "**Tab**" numbers or page numbers in Exhibit SV-8 are references to the document behind the corresponding tab or the corresponding page in Exhibit SV-8, as the case may be.

The proceeding and the 19 October 2015 orders

6. On 17 May 2015 Mr Hall and I were appointed joint and several voluntary administrators of BBYL and certain related companies. BBYL was the main trading entity in the BBY independent financial services group. BBYL provided a broad range of financial services to clients including stockbroking and associated services, dealing in financial products, asset management, financial advice and research.
7. BBYL organised its financial products into separate business lines (**product lines**) as follows:
 - (a) cash equities (**Equities**);
 - (b) exchange-traded options (**ETOs**);
 - (c) futures (**Futures**);
 - (d) foreign exchange (**FX**);
 - (e) "**Saxo**" which related to trading via an online trading platform maintained by Saxo Capital Markets (Australia) Pty Ltd (the **Saxo Online Platform**) branded "BBY Online Trader" by BBYL;
 - (f) "**IB**" which related to trading via an online trading platform maintained by Interactive Brokers LLC (the **IB Online Platform**) branded "BBY Online Professional" by BBYL; and
 - (g) miscellaneous other products (**Other Products**).
8. On 12 June 2015 Mr Hall and I caused to be published and circulated the section 439A report relating to BBYL. A true copy of the section 439A report is at **Tab 1**.



9. On 22 June 2015 Mr Hall and I convened a second meeting of creditors of BBYL at which a resolution was passed that BBYL be wound up. Mr Hall and I subsequently became joint and several liquidators of BBYL.
10. On 6 November 2015 Mr Hall and I caused to be published and circulated a notice to clients of BBYL providing information about this proceeding. A true copy of that notice is at **Tab 2**.
11. On 19 October 2015 this Honourable Court made orders and directions for the conduct of this proceeding. A true copy of those orders (the **19 October Orders**) is at **Tab 3**.
12. On 22 December 2015 Ian Hall and I caused to be published a report (the **CSA Report**) recording the outcome of investigations by us and our staff into BBYL's dealings with accounts maintained for the purposes of section 981B of the *Corporations Act 2001* (Cth) (the **client segregated accounts** or **CSAs**). A true copy of the CSA Report is at **Tab 4**.
13. My staff have received a number of enquiries from IB clients of BBYL, particularly following publication of the CSA Report, about the appropriateness of IB clients being included in the same class as Futures, FX and Saxo clients of BBYL. Those clients have expressed a concern that the interests of Futures, FX and Saxo clients of BBYL (on the one hand) and IB clients of BBYL (on the other) are, in certain respects, divergent. This divergence arises in part because the shortfall between the fund available to meet claims by IB clients of BBYL and the likely quantum of IB client claims appears to be significantly less than the shortfall faced by Futures, FX and Saxo clients of BBYL.
14. Section 4.2.5 of the CSA Report sets out the liquidators' estimate of the shortfall faced by IB clients of BBYL in various scenarios with different dates for the determination of the amount of client claims and the amount available for distribution. The value of the assets held by Interactive Brokers LLC referable to trading by BBYL clients on the IB Online Platform fluctuates with changes in the market value of open derivative positions and shares.
15. It may be in the interest of Futures, FX and Saxo clients of BBYL that amounts standing to the credit of the principal CSA corresponding to the Equities and ETOs product lines (the **'541 Account**) and other ETOs-related Recoveries are pooled with other product lines. It may also be in the interest of those clients that amounts recovered from Interactive Brokers LLC are pooled with other product lines. However the interest of IB clients of BBYL is in preserving the benefit of any recovery from Interactive Brokers LLC for the benefit of IB clients. For that reason there is an actual or apparent conflict between the interests of members of the class presently represented by the Third Defendant.
16. The liquidators have not yet recovered the fund held by Interactive Brokers LLC for BBYL clients. The liquidators presently intend to make an application for the Court's direction in respect of a number of matters, including:



- (a) BBYL's contractual obligations upon terminating certain client agreements applicable to IB clients; and
 - (b) how, following termination of those client agreements, shares held through IB for BBYL clients should be dealt with.
17. On 9 February 2016 my solicitors received a letter from Jonathan Milner of Arnold Bloch Liebler, a true copy of which commences on **page 337**. Mr Milner acts for David Nadin, a client of BBYL who traded on the IB Online Platform. Mr Nadin has expressed the concern I described in paragraph 13 above and has expressed a willingness to act as a defendant representing the interests of IB clients of BBYL in this proceeding. A true copy of the IB client statement for Mr Nadin dated 15 February 2016 is at **Tab 5**.
18. In the circumstances set out above, I believe it is appropriate that a person is appointed as soon as possible to represent the interests of IB clients (and that that person is separately represented). It is also appropriate that such a person makes submissions in respect of the liquidators' foreshadowed application for directions in respect of the recovery and distribution of the fund held by Interactive Brokers LLC. I believe Mr Nadin is an appropriate person to fulfil that role. My staff have inspected the books and records of BBYL and it does not appear that Mr Nadin traded in any BBYL product line other than IB.

The position of the parties

19. On 22 January 2016 my solicitors wrote to the solicitors for the Third Defendant who represents Futures, FX, Saxo and "Other Products" (as defined in the 19 October Orders) clients of BBYL about the appropriateness of appointing a representative defendant for IB clients. A copy of that correspondence commences on **page 334**. My solicitors sent a further email on 8 February 2016, a copy of which appears on **page 335**.
20. On 9 February 2016 the solicitors for the Third Defendant wrote to my solicitors confirming that the Third Defendant consents to IB clients proposing a separate representative. A copy of that correspondence appears on **page 335**.
21. On 9 February 2016 my solicitors received the letter from Jonathan Milner referred to in paragraph 17 above. A copy of that letter commences on **page 337**.
22. On 9 February 2016 my solicitors wrote to all parties to this proceeding enclosing a draft interlocutory process and the letter from Mr Milner. A copy of that letter commences on **page 339**.
23. On 10 February 2016 the solicitors for the First Defendants wrote to my solicitors and indicated that while they do not believe there is a need for IB clients to be separately appointed and represented, the First Defendants neither consent nor oppose that proposal. A copy of that correspondence commences on **page 348**.



24. On 11 February 2016 the solicitors for the Fourth Defendant wrote to my solicitors and confirmed that the Fourth Defendant consents to the orders proposed in the letter from my solicitors dated 9 February 2016 being made in chambers. A copy of that letter commences on **page 349**.
25. On 12 February 2016 the solicitors for the Second Defendant wrote to my solicitors seeking further information. A copy of that correspondence commences on **page 350**. My solicitors responded by letter dated 15 February 2016, a copy of which commences on **page 352**.
26. On 16 February 2016 the solicitors for the Second Defendant wrote to my solicitors and confirmed that the Second Defendant neither consents nor opposes the proposed orders. A copy of that correspondence commences on **page 354**.

AFFIRMED at Sydney

Signature of deponent 
 Name of witness Rachel Clementine Norah Woodhouse
 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 have confirmed the deponent's identity using the following identification document:
Driver's licence no. 1593AH

Signature of witness 