

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: 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 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

## INTERLOCUTORY PROCESS

### A. DETAILS OF APPLICATION

This application is made pursuant to rule 7.6 of the *Uniform Civil Procedure Rules 2005*.

On the facts stated in the supporting affidavit of Stephen Ernest Vaughan affirmed on 18 February 2016, the Plaintiffs apply for the following relief:

1. An order that David Nadin be added as fifth defendant and appointed to represent all clients of BBY Limited (Receivers & Managers Appointed) (In Liquidation) (**BBYL**) with an IB Account.
2. An order that the orders made in this proceeding on 19 October 2015 be varied by amending the Schedule to those orders in the manner set out in Annexure A to this Interlocutory Process.

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Filed on behalf of: Plaintiffs  
Prepared by: Emanuel Poulos  
**Ashurst Australia**  
Lawyers  
5 Martin Place  
Sydney NSW 2000

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Tel: (02) 9258 6000  
Fax: (02) 9258 6999  
Ref: EP/RYZA/02-3003-4959  
Attention: Emanuel Poulos

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3. An order that the legal expenses reasonably incurred by David Nadin in acting as a representative defendant be paid out of the Client Segregated Accounts and the Recoveries, other than the Returned Collateral and Erroneous Withdrawals, on a pro-rata basis having regard to the balance of the Client Segregated Accounts and the quantum of such Recoveries (to the extent they have been received) on the date of the payment, on an indemnity basis as determined in accordance with Order 4.
4. An order that, for the purpose of Order 3, the matter be referred to a Registrar for examination and approval of the legal expenses of David Nadin, and the Registrar's decision be subject to review in the same manner as a Registrar's decision approving the remuneration of a liquidator.
5. An order that the plaintiffs are justified in paying the legal expenses incurred by David Nadin as determined in accordance with Order 4, from the Client Segregated Accounts and Recoveries referred to in Order 3 in accordance with Order 3.
6. In these orders defined terms have the meaning set out in Annexure A.

Date: 18 February 2016



Emanuel Poulos,  
Solicitor for the applicants

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

at Law Courts Building, Queens

#### **B. NOTICE TO RESPONDENT(S)**

TO:

**J Mazzetti Pty Ltd ACN 006 705 602 as trustee for  
J Mazzetti Pty Ltd Staff Superannuation Fund  
(and others) (First Defendants)**

c/- Peter Gandolfo  
Partners Legal  
Level 13  
636 St Kilda Rd, Melbourne VIC 3004

#### **Clive Riseam (Third Defendant)**

c/- Mark Wilks  
Corrs Chambers Westgarth  
8 Chifley  
8-12 Chifley Square, Sydney NSW 2000

#### **David Nadin**

c/- Jonathan Milner  
Arnold Bloch Leibler  
Level 24, 2 Chifley Square, Sydney NSW 2000

**Peter Brian Haywood and Bronwen Menai  
Haywood As Trustees For The Haywood  
Superannuation Fund ABN 19 554 375 088  
(Second Defendant)**

c/- Ariel Borland  
Mills Oakley  
PO Box 453  
Collins Street West, Melbourne VIC 8007

#### **Securities Exchanges Guarantee Corporation Limited ACN 008 626 793 (Fourth Defendant)**

c/- Karen O'Flynn  
Clayton Utz  
Level 15, 1 Bligh Street, Sydney NSW 2000

If you or your legal practitioner do not appear before the Court at the time shown above, the application may be dealt with, and an order made, in your absence.

Before appearing before the Court, you must, except if you have already done so or you are the plaintiff in this proceeding, file a notice of appearance, in the prescribed form, in the Registry and serve a copy of it on the plaintiff in the originating process.

**Note**

Unless the Court otherwise orders, a respondent that is a corporation must be represented at a hearing by a legal practitioner. It may be represented at a hearing by a director of the corporation only if the Court grants leave.

**C. FILING**

This interlocutory process is filed by Ashurst Australia, solicitors for the applicant.

**D. SERVICE**

The applicant's address for service is:

c/- Ashurst Australia  
Lawyers  
5 Martin Place  
Sydney NSW 2000  
Ref: EP/RYZA/02-3003-4959

It is intended to serve a copy of this interlocutory process on each respondent.

## Annexure A

<b>Client Segregated Accounts</b>	means the bank accounts maintained pursuant to Part 7.8 of the <i>Corporations Act 2001</i> (Cth) being each of the 47 client segregated accounts of BBYL identified in paragraph 37 of the affidavit of Stephen Ernest Vaughan affirmed on 2 October 2015.
<b>Equities Account</b>	means an account with BBYL established in connection with exchange traded equities such as shares and listed units.
<b>Erroneous Withdrawals</b>	means the sum of \$2,410,066.47 referred to in para 30 of the affidavit of Stephen Ernest Vaughan made 8 October 2015.
<b>ETO Account</b>	means an account with BBYL established in connection with exchange traded options.
<b>Excluded Amounts</b>	means all of the rights, property and undertaking of BBYL of whatever kind and wherever situated whether present or future that is "charged property" within the meaning of the fixed and floating charge dated 2 December 2011 and registered on the Personal Property Securities Register bearing registration number 2012 011 300 250 28.
<b>Futures Account</b>	means an account with BBYL established in connection with exchange traded futures contracts and futures options.
<b>FX Account</b>	means an account with BBYL established in connection with over-the-counter products comprising foreign exchange contracts.
<b><u>IB Account</u></b>	<u>means an account with BBYL established in connection with financial products offered by Interactive Brokers LLC.</u>
<b>Liquidators</b>	means the First Plaintiffs.
<b>Other Products Account</b>	means an account with BBYL established in connection with miscellaneous financial products, including carbon trading, <u>not being an ETO Account, Equities Account, Futures Account, FX Account, Saxo Account or IB Account.</u>
<b><del>Product Line</del></b>	<del>Means each of the classes of financial products provided by BBYL to its clients referable to an ETO Account, Equities Account, Futures Account, Saxo Account or Other Products Account.</del>
<b>Recoveries</b>	means any monies received, or to be received, by BBYL from any person after the date of the appointment of administrators to BBYL which relate to client positions, including without limitation, pursuant to arrangements with clearing houses, hedge counterparties or other financial service providers, but excluding Excluded Amounts.
<b>Returned Collateral</b>	means the sum of \$3,400,115 referred to in paragraph 36(b) of the affidavit of Stephen Ernest Vaughan made 2 October 2015.
<b>Saxo Account</b>	means an account with BBYL established in connection with financial products offered by Saxo Capital Markets.