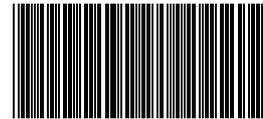




Filed: 15 June 2016 7:12 PM



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Form 40
UCPR 35.1

AFFIDAVIT OF Stephen Ernest Vaughan - 15 Jun 2016

COURT DETAILS

Court	Supreme Court of NSW
Division	Equity
List	Corporations List
Registry	Supreme Court Sydney
Case number	2015/00237028

TITLE OF PROCEEDINGS

First Plaintiff	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
Second Plaintiff	BBY Limited (Receivers and Managers Appointed)(In Liquidation) ACN 006 707 777
First Defendant	J Mazzetti Pty Ltd ATF J Mazetti Pty Limited Staff Superannuation Fund & ORS ACN 006705602
Second Defendant	Peter Brian Haywood and Bronwen Menai Haywood as trustees for the Haywood Superannuation Fund
Number of Defendants	4

FILING DETAILS

Filed for	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, Plaintiff 1 BBY Limited (Receivers and Managers Appointed)(In Liquidation) ACN 006 707 777, Corporation subject of the proceedings 1 BBY Limited (Receivers and Managers Appointed)(In Liquidation) ACN 006 707 777, Plaintiff 2
Legal representative	EMANUEL JOHN POULOS
Legal representative reference	
Telephone	02 9258 6000

ATTACHMENT DETAILS

In accordance with Part 3 of the UCPR, this coversheet confirms that both the Affidavit (General) (e-Services), along with any other documents listed below, were filed by the Court.

Affidavit (UCPR 40) (240998200__1_BBY _ 51. Affidavit of S Vaughan affirmed on 15 June 2016 (Supplementary Report).PDF)

[attach.]

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**

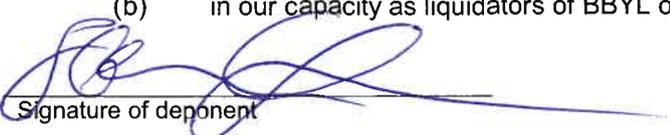
Second Plaintiff

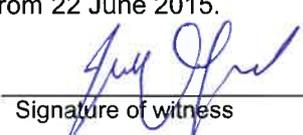
and others

AFFIDAVIT OF STEPHEN ERNEST VAUGHAN

On 15 June 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 a plaintiff in this proceeding.
2. I am a director of the accounting firm KPMG and work from the Sydney office of KPMG.
3. I am one of the joint and several liquidators of the Second Plaintiff, BBY Limited (**BBYL**), together with my fellow liquidator Ian Hall. I am authorised to make this affidavit on behalf of Mr Hall and BBYL.
4. I refer to my affidavit affirmed on 23 December 2015 and filed in this proceeding (**December Affidavit**). In this affidavit I adopt the definitions in the December Affidavit.
5. In this affidavit a reference to "the **Liquidators**" is a reference to Ian Hall and I:
 - (a) in our capacity as administrators of BBYL from 17 May 2015 to 21 June 2015; and
 - (b) in our capacity as liquidators of BBYL on and from 22 June 2015.


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
Fax: (02) 9258 6999
Ref: EP RYZA 02 3003 4959
Attention: Jack Orford

6. I make this affidavit from my own knowledge and from information, which I believe to be true, obtained during the course of the investigations conducted by Ian Hall, me and our staff into BBYL's affairs, including through review of the books and records by me and my staff. Where I have relied upon specific books or records I have specifically identified them in this affidavit. Where I have relied upon things that were said to me or my staff by former employees or persons concerned with the business of BBYL I have specifically indicated so.
7. Shown to me at the time of affirming this affidavit are:
- (a) a compact disc marked "**Exhibit SV-16**" which contains the Supplementary CSA Report (defined in paragraph 10 below) and the "**Appendices**" referred to in the Supplementary CSA Report; and
 - (b) a compact disc marked "**Confidential Exhibit SV-17**" which contains the "**Exhibits**" referred to in the Supplementary CSA Report (defined in paragraph 10 below) together with the documents listed in the table in paragraph 8 below.
8. In the table below I set out a number of Confidential Exhibits to the CSA Report that were inadvertently omitted from Confidential Exhibit SV-5 or, in the case of Confidential Exhibit 119, where the wrong document was inadvertently included in Confidential Exhibit SV-5. Those documents are also included on the compact disc marked "**Confidential Exhibit SV-17**". All of those documents have previously been provided by my solicitors to the parties to the proceeding.

Document	Title
CE 53 (second page)	List of Funds Transferred by Verbal Direction from Senior Management
CE 93 (second email)	Email 'C&H Cook S F'
CE 97	Email 'FW BBY Online Trader (Spectrum) Acs 70004341 & 70003499'
CE 106	Email 'RE: For Immediate Action – ASX Clear Additional Cover Call'
CE 119	ASX Spreadsheet – Close Out Derivatives Client Account Level Summary

9. The Confidential Exhibits contain material which is likely to be confidential, which tends to identify individual employees of the BBY Group or which tends to identify individual clients of BBYL.

A Liquidators' further investigations

10. The Liquidators' staff have conducted further investigations into BBYL's dealings with client monies, its CSAs and related matters. The outcome of those further investigations is recorded in a report prepared by the Liquidators' staff, under my supervision, contained on the compact disc marked "**Exhibit SV-16**" (the **Supplementary CSA Report**). The Supplementary CSA Report contains

further information about BBYL's dealings with client monies that were the subject of requests for further information made by the parties to this proceeding.

11. In paragraphs 12–17 below I refer to some aspects of the Supplementary CSA Report and the investigations underlying that report that are relevant to matters set out in my December Affidavit.

B Classification of the WLP Omnibus account

12. In paragraph 56 of my December Affidavit, I stated that for the purpose of the transaction matching matrix we performed (described in section 5.2.4 of the CSA Report), the WLP Omnibus Account was classified as a Saxo CSA. The Supplementary CSA Report contains, in section 9, further analysis of the WLP Omnibus Account, which suggests (as stated on page 36 of the CSA Report) that the account was used as a "pass-through" account in respect of client deposits for both the Saxo and IB product lines. To avoid confusion, that account has been classified as part of a new account pool "WLP Omnibus" for the purpose of the Supplementary CSA Report.

C Pre and post-March funds flows relating to the Equities and ETOs business

13. In sub-paragraphs 230(a)–230(c) of my December Affidavit, I provided a summary of the daily funding pattern for the Equities and ETOs business "*from about March 2015*". That summary included, in sub-paragraph (b), a statement to the effect that amounts payable by BBYL in respect of ETO margin or Equities settlements were transferred from the '541 Account to the Facilitation Account via the General Account each day.
14. The email correspondence dated 16–18 March 2015 in Appendix 119 to the CSA Report, referred to in that sub-paragraph, suggested that such transfers occurred at about 2.30 pm each day. However it appears that BBYL in fact ceased making those transfers from about March 2015, despite the form of email correspondence exchanged with St George in Appendix 119 to the CSA Report. That is:
- (a) paragraph 230 of my December Affidavit accurately reflects BBYL's practice prior to about March 2015; and
 - (b) from about March 2015, BBYL ceased making the payments referred to in sub-paragraph 230(b) of the December Affidavit.

D End of Day Deposits to the '541 Account

15. In paragraph 238 of my December Affidavit I described BBYL's practice of making End of Day Deposits to the '541 Account where that was necessary to ensure that the balance of the '541 Account was at least the aggregate amount BBYL regarded itself as being obliged to hold on trust for Equities and ETOs clients (the **Required Balance**). In that paragraph I said that if the balance of the '541 Account was less than the Required Balance at the end of a trading day then "*BBYL would transfer funds from a House Account to the '541 Account ...*" (emphasis added) so that the balance of the account was equal to the Required Balance.




16. The further investigations conducted by my staff and reported principally in section 5 of the Supplementary CSA Report suggest that throughout the period December 2011 to May 2015 BBYL also used funds on deposit in a variety of non-House Accounts (referred to as 'BBY Corp' in certain narratives describing the transactions) for purposes associated with the Equities and ETOs business, including making End of Day Deposits to ensure that at the end of each trading day the '541 Account had the Required Balance. In the Supplementary CSA Report these transactions (and transactions that appear to have been made to "repay" funding provided from those sources) are described as "**Equity/ETO Funding Transactions**".
17. In paragraph 266(a)(ii) I referred to transactions on the '541 Account, including "*receipts by way of funding from the Facilitation Account (and, in certain instances, from other CSAs) in order to ensure that BBYL had sufficient funds in the '541 Account to meet what BBYL regarded as the amount it was obliged to hold for Equities clients and ETOs clients*". In addition to the instances in which the '541 Account appears to have received funding "*from other CSAs*", it appears (as set out in section 5.2.6 of the Supplementary CSA Report) that at least some Equity/ETO Funding Transactions were funded using client monies from non-Equities/ETOs product lines.

AFFIRMED at Sydney

Signature of deponent

Name of witness

Address of witness

Capacity of witness

Sydney

JACK TILOR OXFORD

Level 11, 5 Martin Place, Sydney

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 confirmed the deponent's identity using the following identification document:

NSW DRIVER'S LICENCE

Signature of witness