

CITATION: Staines v. Royal Bank of Canada, 2016 ONSC 5270
COURT FILE NO.: CV-15-536174CP
DATE: 20160822

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:)
)
CHRISTOPHER STAINES) *Kirk Baert and David Sterns* for the Plaintiff
)
) Plaintiff)
)
- and -)
)
ROYAL BANK OF CANADA, RBC) *Laura Cooper* for the Defendants, BNP
CAPITAL MARKETS LLC, BANK OF) Paribas Group, BNP Paribas North America
AMERICA CORPORATION, BANK OF) Inc., BNP Paribas (Canada), and BNP Paribas
AMERICA, N.A., BANK OF AMERICA)
CANADA, BANK OF AMERICA NATIONAL) *Linda Plumpton* for the Defendants, Bank of
ASSOCIATION, THE BANK OF TOKYO) America Corporation, Bank of America, N.A.,
MITSUBISHI UFJ LTD., BANK OF TOKYO) Bank of America Canada, and Bank of
MITSUBISHI UFJ (CANADA), BARCLAYS) America National Association
BANK PLC, BARCLAYS CAPITAL INC.,)
BARCLAYS CAPITAL CANADA INC., BNP) *Katherine L. Kay* for the Defendants, UBS
PARIBAS GROUP, BNP PARIBAS NORTH) AG, UBS Securities LLC and UBS Bank
AMERICA INC., BNP PARIBAS (CANADA),) (Canada)
BNP PARIBAS, CITIGROUP, INC.,)
CITIBANK, N.A., CITIBANK CANADA,) *Allan Coleman* for the Defendants, Royal
CITIGROUP GLOBAL MARKETS CANADA) Bank of Canada and RBC Capital Markets
INC., CREDIT SUISSE GROUP AG, CREDIT) LLC
SUISSE SECURITIES (USA) LLC, CREDIT)
SUISSE AG, CREDIT SUISSE SECURITIES)
(CANADA), INC., DEUTSCHE BANK AG,) *Daniel Cohen* for the Defendants, The Bank
THE GOLDMAN SACHS GROUP, INC.,) of Tokyo Mitsubishi UFJ Ltd. and Bank of
GOLDMAN, SACHS & CO., GOLDMAN) Tokyo-Mitsubishi UFJ (Canada)
SACHS CANADA INC., HSBC HOLDINGS)
PLC, HSBC BANK PLC, HSBC NORTH) *Linda Fuerst and D. Michael Brown* for the
AMERICA HOLDINGS INC., HSBC BANK) Defendants, Citibank Canada, Citigroup
USA, N.A., HSBC BANK CANADA,) Global Markets Canada Inc., Citigroup, Inc.
JPMORGAN CHASE & CO., JPMORGAN) and Citibank, N.A.
CHASE BANK, N.A., J.P. MORGAN BANK)
CANADA, J.P. MORGAN CANADA,) *Donald B. Houston and Shane D'Souza* for
JPMORGAN CHASE BANK NATIONAL) the Defendants, Credit Suisse Group AG,
ASSOCIATION, MORGAN STANLEY,) Credit Suisse Securities (USA) LLC, Credit
MORGAN STANLEY CANADA LIMITED,) Suisse AG and Credit Suisse Securities
ROYAL BANK OF SCOTLAND GROUP) (Canada), Inc.
PLC, RBS SECURITIES, INC., ROYAL)
BANK OF SCOTLAND N.V., ROYAL BANK)

OF SCOTLAND PLC, SOCIÉTÉ GÉNÉRALE)
 S.A., SOCIÉTÉ GÉNÉRALE (CANADA),)
 SOCIÉTÉ GÉNÉRALE, STANDARD)
 CHARTERED PLC, UBS AG, UBS)
 SECURITIES LLC, and UBS BANK)
 (CANADA))

Defendants)

) *Andrea Laing* and *Robert Kwinter* for the
 Defendants, The Goldman Sachs Group,
 Inc., Goldman, Sachs & Co. and Goldman
 Sachs Canada Inc.

) *Mark Evans* for the Defendants, HSBC
 Holdings plc, HSBC Bank plc, HSBC North
 America Holdings Inc., HSBC Bank USA,
 N.A. and HSBC Bank Canada

) *Emrys Davis* and *Ranjan Agarwal* for the
 Defendants, JPMorgan Chase & Co.,
 JPMorgan Chase Bank, N.A., J.P. Morgan
 Bank Canada, J.P. Morgan Canada and
 JPMorgan Chase Bank National Association

) *Matthew Milne-Smith* for the Defendants,
 Morgan Stanley and Morgan Stanley Canada
 Limited

) *Adam Chisholm* and *Samantha Gordon* for
 the Defendants, Royal Bank of Scotland
 Group plc, RBS Securities, Inc., Royal Bank
 of Scotland N.V. and Royal Bank of
 Scotland plc

) *Nadia Campion* for the Defendants, Société
 Générale S.A., Société Générale and Société
 Générale (Canada)

) *Ian Matthews* for the Defendant, Standard
 Chartered plc

) *Christopher Horkins* for (non-party) Bank of
 Montreal, BMO Financial Corp., BMO
 Harris Bank NA, BMO Capital Markets
 Limited

Proceeding under the *Class Proceedings Act, 1992*)

) **HEARD:** August 16, 2016

PERELL, J.

REASONS FOR DECISION

[1] The Defendants are: Bank of America Corporation, Bank of America, N.A., Bank of America Canada, Bank of America National Association, The Bank of Tokyo Mitsubishi UFJ Ltd., Bank of Tokyo-Mitsubishi UFJ (Canada), Barclays Bank plc, Barclays Capital Inc., Barclays Capital Canada Inc., BNP Paribas Group, BNP Paribas North America, Inc., BNP Paribas (Canada), BNP Paribas, Citigroup, Inc., Citibank, N.A., Citibank Canada, Citigroup Global Markets Canada Inc., Credit Suisse Group AG, Credit Suisse Securities (USA) LLC, Credit Suisse AG, Credit Suisse Securities (Canada), Inc., Deutsche Bank AG, The Goldman Sachs Group, Inc., Goldman, Sachs & Co., Goldman Sachs Canada Inc., HSBC Holdings plc, HSBC Bank plc, HSBC North America Holdings Inc., HSBC Bank USA, N.A., HSBC Bank Canada, JPMorgan Chase & Co., JPMorgan Chase Bank, N.A., J.P. Morgan Bank Canada, J.P. Morgan Canada, JPMorgan Chase Bank National Association, Morgan Stanley, Morgan Stanley Canada Limited, Royal Bank of Canada, RBC Capital Markets LLC, Royal Bank of Scotland Group plc, RBS Securities, Inc., Royal Bank of Scotland N.V., Royal Bank of Scotland plc, Société Générale S.A., Société Générale (Canada), Société Générale, Standard Charter plc, UBS AG, UBS Securities LLC, UBS Bank (Canada).

[2] In a proposed class action under the *Class Proceedings Act, 1992*, S.O. 1992, c. 6, the Plaintiff, Christopher Staines, alleges that the Defendants conspired with each other to fix prices in the FX Market. It is alleged that the Defendants communicated to coordinate: (i) fixing of spot prices; (ii) controlling and manipulating FX benchmark rates; and (iii) exchanging key confidential customer information to trigger client stop loss orders and limit orders.

[3] Mr. Staines alleges that through the use of multiple chat rooms with names such as “The Cartel,” “The Bandits’ Club,” and “The Mafia,” the Defendants communicated directly with each other to coordinate their: (i) fixing of spot prices; (ii) controlling or manipulating FX benchmark rates; and (iii) exchanging key confidential customer information in an effort to trigger client stop loss orders and limit orders.

[4] Mr. Staines alleges that the Defendants’ conspiracy impacted all manners of FX instruments, including those trading both over-the-counter and on exchanges.

[5] Mr. Staines commenced an action by way of Statement of Claim, which was issued on September 11, 2015. The Statement of Claim pleads several causes of action against the Defendants including a statutory right of action for contraventions of Part VI of the *Competition Act*, R.S.C. 1985, c. C-34, civil conspiracy, and unjust enrichment.

[6] The Class Counsel team is made up of lawyers from Sotos LLP, Siskinds LLP, Koskie Minsky LLP and Camp Fiorante Matthews Mogerman.

[7] Similar litigation has been commenced in Québec. Class Counsel in the Ontario action is working cooperatively with the law firm of Siskinds Desmeules s.e.n.c.r.l (“**Siskinds Québec**”), counsel to the plaintiff in the Québec action (Court File No. 200-06-000189-152), to prosecute the Québec action.

[8] Recently Mr. Staines reached settlements with: (1) UBS AG, UBS Securities LLC and UBS Bank (Canada) (collectively, “UBS”); (2) BNP Paribas Group, BNP Paribas North America, Inc., BNP Paribas (Canada), and BNP Paribas (collectively, “BNP”); and (3) Bank of America Corporation, Bank of America, N.A., Bank of America Canada, and Bank of America National Association (collectively “Bank of America”).

[9] The settlements are subject to court approval and if the Settlement Agreements are approved: (1) UBS has agreed to pay \$4,950,000; (2) BNP has agreed to pay \$4,500,000; and (3) Bank of America has agreed to pay \$6,500,000 to settle the class action.

[10] The Settlement Agreements provide, among other things, that: (a) the Settlement Amounts will be held in an interest-bearing trust account for the benefit of Settlement Class Members; (b) the costs of disseminating the Notice of Certification and Settlement Approval Hearings are to be paid by Class Counsel from the Settlement Amounts; (c) the Opt-Out Deadline be sixty (60) days after the date the Notice of Certification and Settlement Approval is first published; and (d) the Settling Defendants agree to provide reasonable cooperation to the plaintiff class in order to assist in the continued prosecution of this action against the non-settling Defendants.

[11] The settlements are a compromise of disputed claims and UBS, BNP, and Bank of America do not admit any wrongdoing or liability.

[12] Mr. Staines applies for a consent certification for settlement purposes.

[13] More precisely, Mr. Staines moves for an order, among other things:

- Certifying this action as a class proceeding for settlement purposes only as against: (1) UBS; (2) BNP; and (3) Bank of America;
- Defining the class as:

All Persons in Canada who, between January 1, 2003 and December 31, 2013, entered into an FX Instrument⁽¹⁾ either directly or indirectly through an intermediary, and/or purchased or otherwise participated in an investment or equity fund, mutual fund, hedge fund, pension fund or any other investment vehicle that entered into an FX Instrument. Excluded from the class are the defendants, their parent companies, subsidiaries, and affiliates; provided, however, that Investment Vehicles shall not be excluded from the Settlement Class.

“FX Instruments” includes FX spot transactions, outright forwards, FX swaps, FX options, FX futures contracts, options on FX futures contracts, and other instruments traded in the FX Market;

- Defining the common issue as:

Did the Settling Defendants conspire to fix, raise, maintain, stabilize, control, or enhance unreasonably the prices of currency purchased in the foreign exchange or foreign currency market (the “FX Market”)?

- Appointing him as the representative plaintiff for the Ontario Settlement Class;
- Providing that the Order and any reasons given by the Court in connection with it and the certification of the Ontario action as against the Settling Defendants for settlement purposes pursuant to the Order, including, without limitation, the definition of the Ontario Settlement Class and the Common Issue, are without prejudice to the rights and defences of the Non-Settling Defendants in connection with the ongoing Ontario action

and, without restricting the generality of the foregoing, may not be relied on by any person to establish jurisdiction, the criteria for certification (including class definition) or the existence or elements of the causes of action asserted in the Ontario action, as against the Non-Settling Defendants; and


- Approving the Notice Plan.

[14] The court is required to certify the action as a class proceeding where the following five-part test in s. 5 of the *Class Proceedings Act, 1992* is met: (1) the pleadings disclose a cause of action; (2) there is an identifiable class of two or more persons that would be represented by the representative plaintiff; (3) the claims of the class members raise common issues; (4) a class proceeding would be the preferable procedure for the resolution of the common issues; and (5) there is a representative plaintiff who: (a) would fairly and adequately represent the interests of the class; (b) has produced a plan for the proceeding that sets out a workable method of advancing the proceeding on behalf of the class and of notifying class members of the proceeding, and (c) does not have, on the common issues for the class, an interest in conflict with the interests of other class members.

[15] The fact that an action is certified on consent for settlement purposes does not dispense with the need to meet the certification criteria but they may be less rigorously applied in a settlement context: *Osmun v. Cadbury Adams Canada Inc.*, [2009] O.J. No. 5566 (S.C.J.) at para 21.

[16] Pursuant to s. 5 (1) of the *Class Proceedings Act, 1992*, having reviewed the motion record, I am satisfied that all of the criteria for certification have been satisfied.

[17] Order to go as asked.



Perell, J.

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COURT FILE NO.: CV-15-536174CP
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**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

CHRISTOPHER STAINES

Plaintiff

– and –

ROYAL BANK OF CANADA, RBC CAPITAL MARKETS LLC, BANK OF AMERICA CORPORATION, BANK OF AMERICA, N.A., BANK OF AMERICA CANADA, BANK OF AMERICA NATIONAL ASSOCIATION, THE BANK OF TOKYO MITSUBISHI UFJ LTD., BANK OF TOKYO-MITSUBISHI UFJ (CANADA), BARCLAYS BANK PLC, BARCLAYS CAPITAL INC., BARCLAYS CAPITAL CANADA INC., BNP PARIBAS GROUP, BNP PARIBAS NORTH AMERICA INC., BNP PARIBAS (CANADA), BNP PARIBAS, CITIGROUP, INC., CITIBANK, N.A., CITIBANK CANADA, CITIGROUP GLOBAL MARKETS CANADA INC., CREDIT SUISSE GROUP AG, CREDIT SUISSE SECURITIES (USA) LLC, CREDIT SUISSE AG, CREDIT SUISSE SECURITIES (CANADA), INC., DEUTSCHE BANK AG, THE GOLDMAN SACHS GROUP, INC., GOLDMAN, SACHS & CO., GOLDMAN SACHS CANADA INC., HSBC HOLDINGS PLC, HSBC BANK PLC, HSBC NORTH AMERICA HOLDINGS INC., HSBC BANK USA, N.A., HSBC BANK CANADA, JPMORGAN CHASE & CO., JPMORGAN CHASE BANK, N.A., J.P. MORGAN BANK CANADA, J.P. MORGAN CANADA, JPMORGAN CHASE BANK NATIONAL ASSOCIATION, MORGAN STANLEY, MORGAN STANLEY CANADA LIMITED, ROYAL BANK OF SCOTLAND GROUP PLC, RBS SECURITIES, INC., ROYAL BANK OF SCOTLAND N.V., ROYAL BANK OF SCOTLAND PLC, SOCIÉTÉ GÉNÉRALE S.A., SOCIÉTÉ GÉNÉRALE (CANADA), SOCIÉTÉ GÉNÉRALE, STANDARD CHARTERED PLC, UBS AG, UBS SECURITIES LLC, and UBS BANK (CANADA)

Defendants

REASONS FOR DECISION

PERELL J.